



Oracle obtained in response to a demand by Plaintiff pursuant to 8 Del. C. § 220) as to all other matters, and allege as follows.

### **SUMMARY OF THE ACTION**

1. This is a stockholder derivative action arising out of an unlawful plan and scheme whereby Oracle agreed to purchase NetSuite Inc. (“NetSuite”) – a company that was 47%-owned (directly and indirectly) and controlled by Ellison, who is also the founder, Chairman, Chief Technology Officer and controlling stockholder of Oracle – for the benefit of Ellison and his family and to the detriment of the Company (the “Transaction”). As explained below, Ellison had misjudged the proliferation of cloud technology, and when it became clear that cloud technology was necessary for the future financial success of Oracle, Oracle was in a race to catch up with its competitors. Ellison took advantage of Oracle’s need for cloud-based acquisition and used Oracle’s money to overpay for NetSuite for the benefit of himself and his family, receiving nearly \$4 billion from the Transaction – a massive return on Ellison’s initial \$125 million investment in NetSuite.

2. Although the Transaction required Oracle to pay a price far more than any independent, disinterested third-party would pay for NetSuite on a standalone basis, it is unsurprising that the Transaction was approved under the purview of

Oracle's board of directors ("Board"). Ellison exercises significant control and influence over the Company as its largest individual stakeholder.

3. Despite the formation of a special committee of the Board to review, evaluate, negotiate and approve the Transaction ("Special Committee"), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As the acquisition "process" unfolded, Ellison-loyalists in Oracle's senior management, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. The Special Committee itself consisted of conflicted members James (who had worked intimately with Oracle senior management on cloud-based initiatives during her recent and lengthy career at Oracle-partner Intel), Panetta (who played an instrumental role in a pivotal project in Ellison's daughter's career, also a stockholder of NetSuite), and Conrades (who serves on the heavily-conflicted Committee on Independence Issues ("Independence Committee") that consistently approves self-interested transactions between Oracle and Ellison's other companies). As detailed below, the entire Board has divided loyalties and



conflicting financial and professional interests that precluded each Board member from fairly evaluating the Transaction and/or preclude each from evaluating a demand pursuant to Chancery Court Rule 23.1.

5. In negotiating and agreeing to the Transaction, which serves to enrich unjustly Oracle's controlling stockholder at the expense of the Company, the Individual Defendants breached their fiduciary duties to the Company.

### **JURISDICTION**

6. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

7. As directors of a Delaware corporation, the Individual Defendants have consented to the jurisdiction of this Court pursuant to 10 Del. C. § 3114.

8. This Court has jurisdiction over Oracle pursuant to 10 Del. C. § 3111.

### **THE PARTIES**

9. Plaintiff SEPTA is a stockholder of Oracle and has been a stockholder at all times relevant to the claims asserted herein.

10. Nominal Defendant Oracle is a Delaware corporation with its principal executive offices located at 500 Oracle Parkway, Redwood City, California. Oracle is the world's largest enterprise software company and a leading provider of computer hardware products and services. The Oracle Database software is the world's most popular enterprise database software. The



Company develops, manufactures, markets, distributes and services database and middleware software; applications software; and hardware systems, consisting primarily of computer server and storage products.

11. Defendant Ellison is the founder of Oracle, and has been a director since Oracle's inception in June 1977. Ellison is currently Oracle's "full time" executive Chairman and Chief Technology Officer, a position he has held since September 2014. Ellison previously held the position of Oracle's CEO from its inception in June 1977 until September 2014. Ellison was also previously Chairman of the Board from May 1995 to January 2004. He is Oracle's largest and the controlling stockholder of the Company, with an ownership interest of 28% of Oracle's outstanding common stock. Ellison also owns (directly and indirectly) a controlling (and near-majority) stake in NetSuite. NetSuite, was founded by Ellison in 1998 and funded by a \$125 million investment from Ellison's private venture capital company, Tako Ventures LLC. Ellison stood on both sides of the Transaction. Ellison, as detailed below, generates the idea of any acquisition by Oracle. He then deploys his team of Catz, Hurd and Kehring to obtain his desired result. Ellison, also as detailed below, given his huge stake in NetSuite, necessarily drove the negotiation from the NetSuite side of the deal.

12. Defendant Safra A. Catz has been an executive of Oracle since January 2004 and has served as a director since October 2001. Catz has been co-

CEO of Oracle (with Hurd) since September 2014. She was President from January 2004 until September 2014, Chief Financial Officer from November 2005 until September 2008, Interim Chief Financial Officer from April 2005 until July 2005, and Chief Financial Officer since April 2011. She served as Executive Vice President from November 1999 to January 2004 and Senior Vice President from April 1999 to October 1999. Prior to joining Oracle, Catz worked at the investment bank of Donaldson, Lufkin & Jenrette (“DLJ”) from 1986 to 1999. During her time at DLJ, Catz worked on several engagements for Oracle and struck up a friendship with Ellison. Ellison personally recruited Catz to leave DLJ and join Oracle in 1999. As detailed more fully below, Catz is a close and loyal aide to Ellison who has been described in the media as Ellison’s “secretive but effective right hand” and “Ellison’s ultra-effective consigliere.”

13. Defendant George H. Conrades was a member of the Special Committee, has served as a director since January 2008, as a member of the Compensation Committee since January 2011 and as a member of the Independence Committee since fiscal year 2016. Conrades serves on the heavily-conflicted Independence Committee (along with Berg, Bingham (until November 2016) and Garcia-Molina) that consistently approves self-interested transactions between Oracle and Ellison’s other companies. While Conrades was Executive Chairman of Akamai Technologies, Inc. (“Akamai”), Akamai received over a

million dollars from Independence Committee approved transactions between Akamai and Oracle. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Given Conrades willingness to bless transactions with Ellison [REDACTED]

[REDACTED], he was unable to independently consider the Transaction or matters concerning Ellison.

14. Defendant Renee J. James was a member of the Special Committee and has served as a director since December 2015 and as a member of the Compensation Committee since fiscal year 2016. James currently serves as an operating executive for The Carlyle Group, a global alternative asset manager. In January 2016, James concluded a 28-year career with Intel Corporation, a longtime and close partner of Oracle's, where she most recently served as president. During her 28-year career at Intel, James oversaw the company's strategic expansion into providing proprietary and open source software and services for applications in enterprise, security, and cloud-based computing. James was often responsible for leading Intel strategic relations with Oracle, and James was often a speaker at Oracle's annual customer conference. In fact, in September 2014, at the Oracle OpenWorld 2014, Ellison laid out his complete cloud platform vision, and James



(then-President of Intel) was billed as a keynote speaker to highlight “how Intel and Oracle are working closely together to deliver complete solutions for private clouds that offer compelling value-value that in many cases exceeds that of public cloud solutions.” “All-Star Lineup of Partners to Keynote at Oracle OpenWorld and JavaOne San Francisco,” Oracle Press Release, September 10, 2014 (available at: <http://www.oracle.com/us/corporate/press/2288448>). Additionally, in July 2015, James announced that she was stepping down from her position as President of Intel to look for a CEO job elsewhere but would stay on temporarily to help with transition. [REDACTED]

[REDACTED] James joined the Board after she exited Intel. As detailed below, no director has ever been appointed without Ellison’s consent. Given these standing ties to Ellison and his company, James was unable to independently consider the Transaction or matters concerning Ellison.

15. Defendant Leon Panetta was a member of the Special Committee and has served as a director since January 2015 and as a member of the Governance Committee since fiscal year 2016. Panetta has ties to Ellison and Ellison’s daughter, Margaret Elizabeth Ellison (“Megan Ellison”), that prevented Panetta from fulfilling his role on the Special Committee and rendered him unable to

independently evaluate the Transaction and consider matters concerning Ellison.

[REDACTED]

[REDACTED]

[REDACTED] In fact as early as 1997, Panetta and Ellison attended a charity dinner at the home of Senator Dianne Feinstein. See “A Hobbled President?” *Newsweek*, March 23, 1997 (available at: <http://www.newsweek.com/hobbled-president-170610>).

16. Additionally, Panetta played an important role in the development of the Megan Ellison-funded film, “Zero Dark Thirty,” which chronicles the hunt for and ultimate Navy SEAL raid leading to the death of Osama bin Laden. Prior to Osama bin Laden’s death, Megan Ellison had signed on to provide all the financing on a movie directed by Kathryn Bigelow (“Bigelow”) and produced by Mark Boal (“Boal”) about an unsuccessful mission to kill Osama bin Laden. Before filming began and the script was still in development, it was announced that Osama bin Laden had been killed. According to declassified internal CIA documents obtained by *Vice News* pursuant to a Freedom of Information Act request, only days after the news broke, Boal was in contact with Panetta (who was the Director of the CIA from 2009 to 2011), and Panetta personally offered to help Boal (who was writing the screenplay) with unprecedented access to CIA information and remained in close contact throughout the filmmaking process. See

“Tequila, Painted Pearls, and Prada – How the CIA Helped Produce Zero Dark Thirty,” *Vice News*, Sept. 9, 2015 (available at: <https://news.vice.com/article/tequila-painted-pearls-and-prada-how-the-cia-helped-produce-zero-dark-thirty>). Additionally, according to a draft of a Pentagon inspector general’s report: “Leon Panetta was fully cooperating with the movie project and that several CIA staff used White House-approved talking points to talk to Mr. Boal about the intelligence that led to UBL’s [Usama bin Laden’s] location.” Draft Report of the Inspector General United States Department of Defense at 4 (available at: <http://pogoarchives.org/m/go/ig/dod-ig-fouo-draft-report.pdf>). The draft report also stated that “Panetta wants the Department to cooperate fully with the makers of the UBL film.” *Id.* at 7.

17. Megan Ellison not only provided the financing for “Zero Dark Thirty,” but was also heavily involved in its pre- and post-production: she consulted regularly with Bigelow and Boal during development; she was instrumental in the dogged pursuit of casting the film’s lead actress, Jessica Chastain (who ultimately won an Oscar for her role); she was on set on location during filming; and she became close with the film’s actors. Megan Ellison (through her company Annapurna Productions) covered the entire approximately \$45 million budget for “Zero Dark Thirty.”



18. While several U.S. senators, including Senators Dianne Feinstein (D-CA) and John McCain (R-AZ) and then-Senators Mark Udall (D-CO) and Carl Levin (D-MI), openly criticized the movie (Senator Feinstein was so “incensed” she walked out of an advance screening after only 15-20 minutes), Panetta came to its defense. During an interview, Panetta, who was portrayed by James Gandolfini in the movie, stated “It’s a movie. And it’s a good movie.” Panetta continued “I think people ought to make their own judgments. There are parts of it that give you a good sense of how the intelligence operations do work. But I also think people in the end have to understand that it isn’t a documentary, it’s a movie.”

19. The parties referred to in Paragraphs 11-15 are referred to herein as the “Individual Defendants.”

### **RELEVANT NON-PARTIES**

20. Non-party NetSuite manufactures an on-demand business application suite which includes accounting/enterprise resource planning (“ERP”), e-commerce and customer relationship management (“CRM”) applications over the internet to companies in the small and medium business segments and divisions of large companies. NetSuite’s products, including NetSuite, NetSuite OneWorld and NetSuite CRM+ are designed as an enterprise-wide business software suite delivered over the Internet as a subscription using the Software as a service (“SaaS”) model.

21. Non-party Jeffrey S. Berg (“Berg”) has served as a director of Oracle since February 1997, as a member of the Governance Committee since October 2001, a member of the Independence Committee since July 2012, and the Chairman of the Independence Committee since November 2016. Berg has been an agent in the entertainment industry for more than 35 years. Berg has served as chairman of Northside Services, LLC, a media and entertainment advisory firm, since May 2015. He was chairman of Resolution, a talent and literary agency he founded, from 2013 until 2015. Between 1985 and 2012, Berg was the chairman and CEO of International Creative Management, Inc. (“ICM”), a talent agency for the entertainment industry. Berg’s ties to Ellison are detailed fully below.

22. Non-party H. Raymond Bingham (“Bingham”) has served as a director and as a member of the Finance and Audit Committee (“F&A Committee”) of the Board since November 2002 (Chairman since November 2016), as a Chairman of the Independence Committee from July 2003 until November 2016, and as Chairman of the Compensation Committee during fiscal year 2016. Bingham’s ties to Ellison are detailed below.

23. Non-party Michael J. Boskin (“Boskin”) has served as a director since April 1994, as a member of the F&A Committee since July 1994 (Chairman since November 2016), and as a member of the Governance Committee from July 1994 through November 2016 (Chairman from July 2012 until November 2016).

Boskin is the Tully M. Friedman Professor of Economics and Hoover Institution Senior Fellow at Stanford University, where he has been on the faculty since 1971. Boskin's ties to Ellison are detailed below.

24. Non-party Bruce R. Chizen ("Chizen") has served as a director since July 2008, as an alternate member of the F&A Committee from October 2008 until July 2012, a member of the F&A Committee since July 2012, and a member and Chairman of the Governance Committee since fiscal year 2016. Chizen's ties to Ellison are detailed below.

25. Non-party Hector Garcia-Molina ("Garcia-Molina") has served as a director since October 2001 and as a member of the Independence Committee since August 2005. Garcia-Molina has been the Leonard Bosack and Sandra Lerner Professor in the departments of Computer Science and Electrical Engineering at Stanford University since 1995 and served as chairman of the department of Computer Science from 2001 to 2004. He has been a professor at Stanford University since 1992. From 1994 until 1997 he was the director of the Computer Systems Laboratory at Stanford University. Garcia-Molina's ties to Ellison are detailed below.

26. Non-party Jeffrey O. Henley ("Henley") is Vice Chairman of Oracle Corporation. Henley served as Oracle's Chief Financial Officer and an Executive Vice President from 1991 to 2004, and has been a member of Oracle's board of



directors since 1995. Henley was Chairman of Oracle from 2004 until 2014. Henley also serves on Oracle's Executive Management Committee.

27. Non-party Mark Hurd ("Hurd") has been an executive of Oracle and a director since September 2010. Hurd has been Oracle's co-CEO (with Catz) since September 2014 and was President from September 2010 until September 2014. Hurd's ties to Ellison are detailed below.

28. Non-party Naomi O. Seligman ("Seligman") has served as a director since November 2005 and as a member of the Compensation Committee since June 2006 (Vice Chairman as of November 2015). Seligman is a senior partner at Ostriker von Simson, a technology research firm that chairs the CIO Strategy Exchange, which she co-founded with her husband Ernest M. von Simson. Since 1999, this forum has brought together senior executives in four vital quadrants of the IT sector. From 1977 until 1999, Seligman served as a cofounder and senior partner of Research Board, Inc., a private-sector institution sponsored by 100 chief information officers from major global corporations, which she also co-founded with her husband Ernest von Simson. Seligman's ties to Ellison are detailed below.

29. Non-party Douglas Kehring ("Kehring") has been Oracle's Executive Vice President, Chief of Staff since March 2015. As chief of staff, he is responsible for helping drive Oracle's business transformation to the cloud,

including organizations, systems, and processes. Kehring also continues to serve as the head of Oracle's corporate development group, a position he has held since 2005. As head of corporate development, Kehring reports to Catz.

30. Non-party David Ferris Ellison ("David Ellison") is the adult son of Larry Ellison. The David Ferris Ellison Trust, which was formed for the benefit of David Ellison, held shares of NetSuite from its formation until the closing of the Transaction. In connection with the Transaction, David Ellison received approximately \$367 million in cash for his 3,368,359 shares of NetSuite common stock.

31. Non-party Megan Ellison is the adult daughter of Larry Ellison. The Margaret Elizabeth Ellison Trust, which was formed for the benefit of Megan Ellison, held shares of NetSuite from its formation until the closing of the Transaction. In connection with the Transaction, Megan Ellison received approximately \$250 million in cash for her 2,292,240 shares of NetSuite common stock.

## **SUBSTANTIVE ALLEGATIONS**

### **A. Background of NetSuite**

32. NetSuite was founded in 1998 as NetLedger after a conversation between Ellison and former Oracle Vice President, Evan Goldberg ("Goldberg"). In the meeting, Goldberg described his idea to Ellison of a customer relationship-

management software that helped salespeople track customers and leads as a service over the internet. Ellison said the idea was interesting, but told Goldberg the first step would be to build finance software and then build customer software around that. Goldberg agreed to do that and Ellison funded the startup with a \$125 million investment through his investment vehicle Tako Ventures LLC and other affiliated funds. The trusts for the benefit of David Ellison and Megan Ellison collectively held approximately 6.5% of the outstanding shares. NetLedger later changed its name to NetSuite in 2003.

33. NetSuite went public in 2007 and began trading on the New York Stock Exchange under the ticker symbol, "N." In connection with the IPO, Ellison transferred the stake held by Tako Ventures L.L.C. to NetSuite Restricted Holdings LLC, a limited liability company formed for the limited purpose of holding Ellison's NetSuite shares and funding charitable gifts as and when directed by Ellison.

34. After the IPO, Ellison and his affiliates maintained control over NetSuite, with Ellison holding approximately 53.2% of NetSuite's common stock, and Ellison and his family members (including trusts for the benefit of David Ellison and Megan Ellison) and related entities beneficially owning an aggregate of approximately 65% of NetSuite's common stock. As stated in each of NetSuite's Form 10-Ks from fiscal years 2007 through 2015:



Ellison is able to exercise control over approval of significant corporate transactions, including a change of control or liquidation.

Ellison's [indirect majority (2007-2013)/significant (2014-2015)] interest in us could discourage potential acquirers or result in a delay or prevention of a change in control over our company or other significant corporation transactions . . . .

35. From the beginning, NetSuite and Oracle had close business relations, and NetSuite was known affectionately as "Larry's other company." During a public appearance in 2012, Ellison stated "I started NetSuite. NetSuite was my idea." NetSuite was initially positioned as the online provider of Oracle software to small businesses as the firm licensed Oracle's brand for a product dubbed "Oracle Small Business Suite." The service was rebranded NetSuite Small Business in July 2004, but still remained closely-linked with Oracle. From 2005 until the closing of the Transaction, NetSuite entered into various software license agreements, related technical support agreements and other agreements with Oracle and its affiliates, including with respect to the following:

- a. In 2004, NetSuite entered into a \$342,000 verbal sponsor contract with Ellison's sailboat-racing team Oracle Racing, Inc. ("Oracle Racing"), pursuant to which NetSuite agreed to supply certain of its cloud-based application services to Oracle Racing in exchange for logo placement on the sailboats.
- b. In April 2005 and May 2007, NetSuite entered into product order agreements with Oracle, along with technical support.
- c. Following Oracle's 2005 acquisition of PeopleSoft, NetSuite temporarily leased some of Oracle's excess office real estate and eventually signed a lease with Oracle.

- d. In October 2007, NetSuite entered into a perpetual software license agreement with an Oracle affiliate to license Oracle database and application server software, along with technical support. This agreement was amended on November 2009, May 2010 and February 2013, to provide for extensions and additional technical support services. These agreements were financed through notes issued to Oracle and its affiliates.
- e. In May 2011, NetSuite announced a new suite of applications, services and partnerships aimed at attracting larger enterprise customers. In connection with this new suite of applications, NetSuite would use Oracle's Exadata servers to run its larger-scale cloud applications. To celebrate the launch, NetSuite hosted a party at Ellison's San Francisco house (complete with complimentary valet parking, steak tartare appetizers and awesome views of the Golden Gate Bridge).
- f. In fiscal year 2014, NetSuite purchased approximately \$3.1 million in cloud software subscriptions, license and hardware support, education and other services from Oracle.
- g. In third quarter 2015, NetSuite entered into an \$875,000 sponsorship renewal agreement with Oracle Racing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. NetSuite has not been profitable during any quarterly or annual period for the 18 years following its formation. In the years preceding its IPO, NetSuite suffered losses totaling nearly \$242 million. After its IPO, NetSuite accumulated an additional \$452.9 million in net losses, putting its accumulated deficit at \$674 million since its inception. Specifically, NetSuite’s reported net losses of \$23.9 million in 2007, \$15.9 million in 2008, \$23.3 million in 2009, \$27.5 million in 2010, \$32.0 million in 2011, \$35.2 million in 2012, \$70.4 million in 2013, \$100.0 million in 2014, and \$124.7 million in 2015.

**B. Background Of The Transaction**

38. In the early days of cloud, “Larry’s other company,” NetSuite, languished, and Ellison publicly ridiculed the cloud in a 2008 interview, saying the cloud industry was “more fashion-driven than women’s fashion” when it came to cloud computing and mocking the “cloud” term as marketing “gibberish.”

39. However, Ellison misjudged the proliferation of the cloud, and as the industry shifted toward the cloud, Oracle found itself behind. Oracle developed its homegrown cloud services, and its cloud revenue had been growing, but it also recognized that it was hard to play catchup to cloud-native competitors such as



Salesforce.com Inc. (which is both the top player in cloud CRM apps and just bought commerce software firm Demandware for \$2.8 billion) and Workday Inc. as well as SAP (top player in the ERP software market and also a player in commerce and CRM apps), Microsoft Corp. (which just announced a big revamp of its cloud business app line-up) and Amazon.com Inc. (which built large businesses running customers' computing operations in the cloud). That left two choices -- build or buy.

40. Thus began Oracle's deep dive into cloud-based acquisitions. Starting in 2010, Oracle began steadily acquiring cloud software companies, particularly SaaS providers that can help the business software maker grow its market share for software rented over the internet, with its most significant acquisitions ranging from \$400 million to \$1.9 billion, including the following transactions:

- In 2011, Oracle purchased RightNow Technologies, which specialized in helping enterprises support customers via call centers, the web and social networks, for \$1.5 billion.
- In early 2012, Oracle purchased Taleo, a leading provider of cloud-based human capital management software that had cultivated 5,000 customers over the years, for \$1.9 billion.
- In late 2012, Oracle purchased Eloqua, which specialized in marketing automation in the cloud, for \$810 million.
- In 2013, Oracle purchased BigMachines, whose cloud-based configure, price, quote software helped salespeople quickly put together and price complex orders, for a reported \$400 million.

- In 2014, Oracle purchased BlueKai, which aggregated data on consumers and offers it to marketers via its platform, enabling marketers to produce targeted marketing campaigns to reach consumers via the web and on mobile devices, for a reported more than \$400 million.
- In late 2014, Oracle purchased Datalogix, which provided target advertising based on consumers' spending habits, for \$1.2 billion.
- In 2016, Oracle purchased Textura, which offered cloud services for the engineering and construction industry, for \$663 million.
- In 2016, Oracle purchased Opower, offering software which stored and analyzed billions of meter readings, helps improve customer service and meet regulatory requirements for the likes of PG&E, Exelon and National Grid, for \$532 million.

41. Thus, Ellison, as controlling stockholder of Oracle and NetSuite, and with inside access to both companies through his agents and employees, also used his previous misjudgment to take advantage of Oracle and cause it to acquire his unprofitable cloud company, NetSuite, at a price that would provide him and his family with an excessive payout.

42. As recognized in a February 22, 2016 presentation given to the NetSuite board of directors by their financial advisor Qatalyst Partners (“Qatalyst”), Ellison is commonly the person at Oracle generating the idea of an acquisition, and “[a]ll deals [are] executed in centralized corporate development groups with [the] aid of [the] transaction sponsor and back-office functions,” and there is a “[s]tremlined approval process led by Co-[CEOs] and Doug Kehring.”

The Co-CEOs are Catz and Hurd. The Qatalyst presentation also recognized that Oracle usually came into price negotiations with a bid that left just enough room to re-bid 2-3 times to reach its target price. True to form, from the beginning, as can be seen throughout the process at issue here, Ellison set his sights on approximately \$110 per share price and sent Catz, Hurd, and Kehring to get it.

43. In mid-January 2016, [REDACTED]

[REDACTED] proposed to the Board an acquisition of Ellison-owned Netsuite by Oracle. At the conclusion of the meeting, Oracle senior management were authorized to contact NetSuite regarding a potential acquisition offer. [REDACTED]

[REDACTED] While the Board was well aware of the conflict of interest presented by Ellison's controlling stake in both companies, it did not discuss the conflict presented by an acquisition of Netsuite. [REDACTED]

[REDACTED] the Board did not otherwise set up any guidelines or procedures to manage Ellison's conflicts of interest, including procedures to isolate his loyalists and "right hand" from the Special Committee process.

44. In February 2016, in consultation with Oracle's senior management, the Board took steps to form the Special Committee, and in mid-March 2016, the Board, including Catz, formed the Special Committee, consisting of James,



Conrades and Panetta. The Special Committee was belatedly formed [REDACTED]

[REDACTED]

and was delegated the full and exclusive power and authority to review, evaluate, negotiate, and approve the Transaction. Despite the Board's recognition that Ellison was conflicted, it specifically envisioned that Oracle's senior management and Ellison loyalists [REDACTED] would be intimately involved in the Special Committee process. And, Oracle's senior management had access to the acquisition process every step of the way. Oracle management [REDACTED] participated in and led the due diligence discussions with NetSuite, and Oracle senior management, [REDACTED] attended all Special Committee meetings during which pricing and valuation was discussed [REDACTED]

[REDACTED] Additionally, the Special Committee members had very limited direct interaction with representatives of Netsuite – only once at the initial due diligence meeting, and even then, still flanked by Oracle management.

45. During an April 8, 2016 Special Committee meeting [REDACTED] [REDACTED] discussed the importance of acquiring NetSuite and provided the Special Committee with Oracle's preliminary valuation metrics for NetSuite [REDACTED] [REDACTED] During this meeting, the Special Committee discussed engaging a financial advisor.

46. On April 19, 2016, the Special Committee met for the purpose of interviewing and hiring a financial advisor. [REDACTED]

[REDACTED]

[REDACTED] the meeting the Special Committee determined to hire Moelis [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Special Committee's retention of Moelis did not cleanse the process. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47. On April 26, 2016, members of the Special Committee and their advisors, Moelis and Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), had a meeting with members of Oracle's senior management to discuss potential next steps in connection with a potential acquisition of NetSuite.

48. On May 5, 2016, representatives from the Special Committee, Moelis, Skadden and Oracle Management attended a meeting with NetSuite's management and Qatalyst, NetSuite's financial advisor [REDACTED]

[REDACTED]

[REDACTED]

49.

[REDACTED]

[REDACTED]

[REDACTED]

50. On May 20, 2016, the Special Committee held a meeting, during which representatives of Oracle's senior management [REDACTED]

provided a presentation on the strategic rationale for acquiring NetSuite [REDACTED]

[REDACTED]

[REDACTED] Moelis also reviewed a presentation with the Special Committee regarding the potential acquisition of

NetSuite by Oracle and [REDACTED]

[REDACTED] potential alternative [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Special Committee then concluded that it should take the

next step of assessing the value of NetSuite and requested that each of Oracle's

senior management and Moelis provide their perspectives on the appropriate

valuation of NetSuite.



51. On May 23, 2016, members of Oracle's senior management

[REDACTED]  
and Moelis held a telephonic discussion to review Oracle's preliminary financial model for NetSuite [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

52. On May 27, 2016, at a Special Committee meeting, Oracle's senior management [REDACTED] presented the findings of Oracle management's incremental [REDACTED] model ("Incremental Model").

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Representatives of Moelis then presented the members of the Special

Committee with its preliminary financial analysis of NetSuite [REDACTED]

[REDACTED]

53. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Nevertheless,

the Special Committee instructed representatives of Moelis to present to NetSuite the initial proposal of \$100 per share recommended by Oracle management.

54. On June 8, 2016, the Special Committee held a meeting during which members of Oracle's senior management discussed NetSuite's response to the Special Committee's initial offer. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Following discussion, the Special Committee [REDACTED]

[REDACTED] counter of \$106.00 per share in cash. The Special Committee authorized

Moelis to provide the counter-proposal to Qatalyst.

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. In July 2016, Oracle management conducted continued due diligence

[REDACTED] and “expressed concern [REDACTED]

[REDACTED]

[REDACTED] would likely miss financial analysts’ consensus estimates by approximately 1%. Nevertheless, the discussion on price never wavered.

Predictably, under the guidance of Ellison’s loyalists in Oracle management



[REDACTED] the Special Committee forged ahead, toward an acquisition of NetSuite [REDACTED]

57. On July 13, 2016, the Special Committee met to receive an update on the discussions with NetSuite. Moelis reported that in response to its communication of an offer of \$106 per share to Qatalyst on July 12, NetSuite counter-offered at \$111 per share. During this meeting the Special Committee asked Oracle's senior management (including Catz) to discuss the impact of a potential transaction under Oracle management's chosen Incremental Model [REDACTED]

[REDACTED]  
[REDACTED] The Special Committee then determined to make a "best and final" offer of \$109.00 per share in cash, subject to due diligence. Later that day, NetSuite accepted the \$109 per share offer, and the parties engaged in due diligence and finalized the terms of a merger agreement.

58. At a July 27, 2016 afternoon Special Committee meeting, after a presentation by Oracle's senior management [REDACTED] followed by a presentation by Moelis, the Special Committee, on behalf of the Board, approved the Transaction. The Transaction was announced prior to the stock market opening on July 28, 2016, pursuant to which Oracle commenced a tender offer for all

outstanding shares of NetSuite for \$109.00 per share in cash, and closed on November 5, 2016.

**C. NetSuite's Post-Acquisition Value Will Derive Largely From Benefits Provided By Oracle**

59. When the Special Committee approved the Transaction at \$109 per share it should have been aware that the analyses it received from Moelis and Oracle Management did not support such a high price. Although, Moelis created a standalone discounted cash flow analysis ("Standalone DCF") for NetSuite, Moelis explicitly stated that this analysis was for illustrative purposes and was not relied upon as part of its financial analysis, noting that:

- a. NetSuite did not provide certain financial information requested by Moelis and Oracle that was needed to perform a Standalone DCF analysis; and
- b. Due to NetSuite's "negative projected unlevered free cash flow in the final year [of the DCF], the terminal value represent[ed] more than 100% of the implied enterprise value in the illustrative analysis."

At no point did Moelis or Oracle Management provide the Special Committee with a Standalone DCF analysis for NetSuite that it could rely on to approve the Transaction. Instead, after its May 23<sup>rd</sup> call with Oracle Management (presumably Catz and Kehring pushing the Incremental Model), Moelis adopted Oracle Management's preference to value NetSuite on an incremental basis. According to

Moelis's Project Napa Presentation to the Special Committee of the Board of Directors dated July 25, 2016 ("July 25<sup>th</sup> Presentation"), this analysis had the effect of including in NetSuite's value, "the impact of synergies and other benefits that are available only to Oracle pro forma for the acquisition." By including the benefits of the Transaction that will only be attributed to Oracle, Moelis and Oracle Management derived values that exceeded any reasonable estimate of NetSuite's standalone value.

60. Not only did Moelis and Oracle Management rely on an Incremental Model that derived a value for NetSuite based on Oracle's resources and reputation, but the actual inputs into the model raise significant questions about the fairness of the price paid for NetSuite. Moelis's utilization of discount rates ranging from 9.0% - 12.0% and revenue terminal multiples ranging from 7.0x – 9.0x in the three cases resulted in implied perpetuity growth rates ranging from 6.1% - 9.5%. At the time of the acquisition, these were well above the general guidance of inflation and nominal gross domestic product ("GDP") rates used by valuation professionals to estimate the terminal growth rate. Further, in the July 25<sup>th</sup> Presentation, Moelis applied a Revenue Terminal Multiple approach [REDACTED] [REDACTED] Incremental Models for NetSuite. This approach resulted in valuations for NetSuite ranging from \$116.87 - \$211.58 per share. Similarly [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

61. The high values of the estimates created by the Incremental Model are highlighted by competing analyses in the July 25 Presentation. For instance, Moelis presented a summary of Wall Street Research on NetSuite which demonstrated that the price targets for NetSuite established by 20 Wall Street firms ranged from \$60 - \$130 per share, and averaged \$88.15 per share. Notably, only one Wall Street firm set a price target above \$100 per share. These price targets were commonly calculated on a revenue multiple basis with a range that was roughly 4.6x – 7.0x NetSuite’s 2017 revenue (lower than the 7.0x – 9.0x used by Moelis to calculate NetSuite’s terminal value in the Incremental Models and the Standalone DCF analysis).

62. In addition, Moelis’s Selected Public Companies Analysis as set forth in the July 25<sup>th</sup> Presentation calculated NetSuite’s value between \$79 - \$101 per share based on estimated 2016 revenue and \$86 - \$107 per share based on estimated 2017 revenue. However, even these values contain faulty assumptions which artificially inflated NetSuite’s value. In order to reach a value of \$86-\$107 per share based on NetSuite’s estimated 2017 revenue, Moelis parted ways with the Wall Street analysts and increased the revenue multiple to 6.0x – 7.5x.

63. The fact that Oracle was overpaying for NetSuite had to be on the Special Committee's radar given [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A goodwill impairment

charge is taken when:

goodwill's carrying value on financial statements exceeds its fair value. In accounting, goodwill is recorded after a company acquires assets and liabilities, and pays a price in excess of their identifiable value. Goodwill impairment arises when there is deterioration in the capabilities of acquired assets to generate cash flows, and the fair value of the goodwill dips below its book value.<sup>1</sup>

64. Based on this acknowledgement [REDACTED] the Special Committee had to recognize that it was overpaying for NetSuite at \$109 per share.

**D. The Transaction Enriches Ellison And Oracle's Management At The Expense Of The Company**

65. Oracle agreed to buy NetSuite for the expensive price of \$9.475 billion, making it one of Oracle's most expensive acquisitions ever, second only to Oracle's \$10.3 billion hostile takeover of PeopleSoft in 2004. Cowen & Co. analyst J. Derrick Wood issued a research note on July 27, 2016, in which he

<sup>1</sup> <http://www.investopedia.com/terms/g/goodwill-impairment.asp>

concluded that Oracle paid 11 times NetSuite's previous 12 months' revenue, whereas it paid about 6.5 times trailing 12-month revenue for its last six similar acquisitions. According to a July 28, 2016 article in *Bloomberg*, entitled "Larry Ellison Welcomes NetSuite Into Big Tech's Arms," on a revenue basis, the deal is among the most expensive software takeovers of the past few years.

66. However, the high price tag is not warranted given, among other things, NetSuite's failure to be profitable in its 18-year existence. While Oracle co-CEO Catz said that acquisition would be "immediately accretive to Oracle's earnings," that is only on a "non-GAAP basis."

67. Further, Ellison's giant stake in NetSuite made any alternative he disfavored unlikely. Stifel Nicolaus Co. analyst Brad Reback observed that the Ellison family's stake in NetSuite meant chances for a rival bidder to emerge were "slim to none."

68. Additionally, Oracle had originally aimed its belated cloud software at large businesses, leaving NetSuite's all-in-one cloud software to be geared toward smaller companies. However, as Oracle began growing its cloud market, it began increasingly reaching down into NetSuite's turf, selling to small and midsize companies, further lessening the necessity to pay over the top dollar for NetSuite. Further, Oracle and NetSuite already have a partnership through which they offer Oracle's cloud HR apps and NetSuite cloud ERP apps to mid-size businesses.



69. The big winner was Ellison and his family, who used Oracle's money to buy NetSuite (taking advantage of Ellison's misjudgment) and gained personal wealth of over \$4.1 billion in the process. At the time of the Transaction, Ellison owned 40% of NetSuite's outstanding shares, and together with the 4% owned by David Ellison (individually and through his trust) and the 3% owned by Megan Ellison (individually and through her trust), controlled approximately 47% of NetSuite's outstanding shares. The 62% premium being paid for NetSuite relative to its June 27, 2016 close of \$67.36 – the last trading day before public speculation and market rumors that NetSuite was potentially the subject of an acquisition transaction involving Oracle – boosted the value of the stake held by Ellison and his family by nearly \$1.6 billion. Scott Liewehr, Digital Clarity Group president said, "Ellison really wins – he own[s] [around 40 percent] of that company personally. How nice to be able to make a personal profit like that and pay yourself from your own business. Wow."

### **DERIVATIVE ALLEGATIONS**

70. Plaintiff brings this action derivatively to redress injuries to be suffered by the Company as a direct result of the breaches of fiduciary duties by the Individual Defendants.

71. Plaintiff has owned Oracle stock continuously during the time of the wrongful course of conduct by the Individual Defendants alleged herein and continues to hold Oracle stock.

72. Plaintiff will adequately and fairly represent the interests of Oracle and its stockholders in enforcing and prosecuting its rights and has retained counsel competent and experienced in stockholder derivative litigation.

**DEMAND ON THE ORACLE BOARD IS EXCUSED AS FUTILE**

73. Plaintiff has not made demand on the Oracle Board to bring suit asserting the claims set forth herein because presuit demand is excused as a matter of law.

74. First, the acquisition of NetSuite by Oracle was plainly an interested transaction and, as alleged above, is not entirely fair to the Company – in terms of both price and process. Because the Transaction was not entirely fair to Oracle, it cannot be deemed a product of the valid exercise of business judgment and demand is excused as a matter of law. Given Ellison’s position of controlling stockholder of Oracle and the Special Committee’s failure to isolate his conflict and his loyalists’ conflicts, the Special Committee cannot serve to provide business judgment protection.

75. Second, a majority of Oracle Board members suffer from conflicts of interest and divided loyalties which precluded them from exercising independent

business judgment in considering the Transaction and/or a demand pursuant to Rule 23.1.

76. As of the date of the filing of this complaint, the Board consisted of the following thirteen directors: Ellison, Berg, Bingham, Boskin, Catz, Chizen, Conrades, Garcia-Molina, Henley, Hurd, James, Panetta, and Seligman.

77. Ellison is the CEO of Oracle and a controlling stockholder. Ellison was also the near-majority owner of NetSuite, and he and his children reaped nearly \$4 billion from the Transaction. Given his overwhelming financial interests and his position in the Company, Ellison is unable to legitimately exercise business judgment when considering a demand.

78. Ellison also exerts tremendous control over the Board due to his ownership interests and position, and he dominates Oracle's Board. No director could ever be appointed or reelected to Oracle's Board over Ellison's objections. As part of his effort to control the Board, Ellison richly rewards those who demonstrate their loyalty to him, and purges those who question his decisions or otherwise threaten his leadership.

79. Ellison has spent his entire career ensuring that only his loyalists are allowed to occupy Board and executive positions at Oracle. Karen Southwick, the author of an Ellison biography entitled *Everyone Else Must Fail*, has written that, "Ellison has created Oracle in his own image" and that "No other large company is



as dominated by a single individual.” Southwick, *supra*, at 482, 475. Southwick’s research included interviews with many former high-ranking Oracle executives, as well as Oracle customers, competitors and partners. Marc Benioff, a former Oracle executive in marketing and product management, was quoted in *Everyone Else Must Fail* as stating, “Larry’s like a spiritual guru, and Oracle is like a cult.” *Id.* at 193.

80. As part of his continued effort to maintain complete control over the Company, Ellison has developed a reputation for richly rewarding executives who display personal loyalty, while summarily purging any who pose a perceived threat to his leadership. As one former Oracle director told *Forbes* magazine, “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.” Victoria Murphy Barrett, *Irreplaceable?* *Forbes*, Aug. 14, 2006. <http://www.forbes.com/forbes/2006/0814/082.html>. In a similar vein, former technology journalist Alex Vieux has explained:

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 [former Oracle Executive Vice President] Gary Bloom, [former Oracle President and Chief Operating Officer] Ray Lane, [former Vice President of Oracle USA sales and service] Gary Kennedy, [former Oracle marketing executive] 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.

Southwick, *supra*, at 448.

81. Former Board member Joe Costello was quoted in Southwick's biography as stating that Ellison treats the Oracle Board as a "necessary inconvenience." *Id.* at 1511. Costello was driven off of the Oracle Board by Ellison after Costello's own company, Cadence Design Systems, selected an Oracle competitor for a particular contract. Ellison was so incensed by this perceived betrayal that he threatened to ruin Costello and Costello's reputation, to the point where Costello resigned. Lane stated that, "[Costello] was a very valuable board member, and his resignation should have sent a signal to everyone: the board serves at Larry's will." *Id.* at 2535.

82. Ellison has repeatedly fired or otherwise forced out high-ranking Oracle executives, including members of the Board, over personality conflicts or perceived threats to his leadership. According to FORBES, "Silicon Valley is littered with refugees from Oracle Corp., former acolytes who fled for better jobs or were fired after fighting with strongman Larry Ellison." Victoria Murphy Barret, *Terry Versus Larry*, Forbes, Aug. 14, 2006, at 82. For example, Oracle President, Chief Operating Officer and Director Ray Lane was forced to resign in June 2000 – three weeks before approximately \$70 million in options were about to vest (and thus that Lane forfeited) – after conflicting with Ellison over the leadership of Oracle. As recounted in an Ellison biography by Matthew Symonds

called *Softwar: An Intimate Portrayal of Larry Ellison and Oracle* (2003),<sup>2</sup> when Ellison reclaimed the title of President, he told Lane that, “The whole company needs to understand that there is one centralized point of authority, and it will be the CEO.”

83. Similarly, Oracle Executive Vice President Gary Bloom, once thought of as a possible successor to Ellison, left Oracle because Ellison began to oppose him and expressed favoritism to Ellison’s longtime loyalist Safra Catz. As recounted in the Symonds Ellison biography (at pages 292-93), Bloom stated, “It got to a point where I was responsible for the vast majority of the company, yet I had no contact with the guy who actually ran the company.”

84. Terence Garnett is another Oracle executive who was pushed out of Oracle after conflicting with Ellison. After his June 1994 firing, Garnett alleged that Ellison had instructed him to steer business opportunities and Oracle corporate resources to Ncube Corp., a company owned by Ellison, and directed Oracle engineers to develop software that would run better on Ncube computers than on competing machines. Because Garnett refused to follow those instructions, Ellison had him summarily removed from the Company. *See* David Bank, *Oracle CEO*

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<sup>2</sup> Symonds’ biography was written with Ellison’s collaboration and includes extensive commentary from Ellison.



*Improperly Steered Business to NCube, Lawsuit Says*, San Jose Mercury News, Oct. 27, 1994, at 2E.

85. Other members of the current Board have also publicly acknowledged Ellison's dominance over Oracle's corporate governance. For example, at an Oracle stockholder meeting in October 2008, Berg stated, "I guess as a founder, owner, operator, you can equate [Ellison] to the owner of a team who can sit up in a skybox and own the franchise." Thomas Wailgum, *What Oracle's Larry Ellison Has In Common With The Simpsons' Mr. Burns*, CIO.com, Oct. 16, 2008. [http://www.cio.com/article/455190/What\\_Oracle\\_s\\_Larry\\_Ellison\\_Has\\_in\\_Common\\_with\\_The\\_Simpson\\_s\\_Mr\\_Burns](http://www.cio.com/article/455190/What_Oracle_s_Larry_Ellison_Has_in_Common_with_The_Simpson_s_Mr_Burns). This statement demonstrates that the Board is subservient to Ellison, cannot legitimately exercise independent business judgment regarding matters where Ellison is an interested party, and do not appreciate that Oracle's stockholders are the ones who truly "own the franchise."

86. In fact, the Independence Committee was essentially formed for the purpose of reviewing and approving transactions involving Ellison. The Independence Committee, which was charged with reviewing and approving conflicted transactions with the purported intention of ensuring that each proposed related person transaction in on terms that, when taken as a whole, are fair to Oracle. The Independence Committee maintained a list of entities, which had ties

to related persons, such that if Oracle pursued a transaction with one of these entities, such transaction would be subject to Independence Committee review. Notably, this list consisted almost entirely of entities involving direct or indirect investments of Ellison.

87. Over the past 5 years alone, the Independence Committee has approved over \$77 million worth of related party transactions with Ellison and his affiliates. Additionally, in April and June 2016, while the Transaction was being negotiated, the Independence Committee (which includes Special Committee member Conrades) approved transactions between NetSuite and Oracle at significantly discounted rates. And, in 2011, the Independence Committee approved Oracle's acquisition of an Ellison-controlled company, Pillar Data Corporation ("Pillar"), pursuant to an earn-out and on terms that guaranteed Ellison's \$565 million loan to Pillar would be paid off first.

88. This is hardly a surprise, given Ellison has consistently stacked the Independence Committee with directors who have strong ties and loyalty to him. Incredibly, Don Lucas, who was Ellison's mentor and father figure, Oracle's founding investor, the first Chairman of the Oracle Board, and the previous long-time co-trustee of the trusts for the benefit of Ellison's children, was a longtime member of the Independence Committee, serving from October 1999 until he resigned from the Board in 2013. The Independence Committee currently consists

of long-time Independence Committee member Garcia-Molina (who served on the Independence Committee alongside Lucas), long-time Independence Committee member Berg (who, as described more fully below, has a lengthy and extensive business and social relationship with Ellison and his family), and Special Committee and Independence member Conrades (whose former company Akamai was the beneficiary of over a million dollars received pursuant to Independence Committee-approved transactions between Oracle and Akamai while Conrades was Executive Chairman of Akamai).

89. Further, while Ellison is no longer CEO and has assumed the position of CTO and “full time” Executive Chairman, his dominance over Oracle has remained unchanged. Analysts and others in the industry acknowledged Ellison’s continued dominance following the announcement of his stepping down:

- “He’s not going anywhere,” said Tim Bajarin, tech analyst and president of Creative Strategies.
- The shift “doesn’t really change things,” said Scott McNealy, former Sun Microsystems CEO (which Oracle eventually acquired) and current chairman of social media marketing start-up Wayin. “He’s going to continue to do the things he’s going to continue to do.”
- Mike Wilson, author of “The Difference Between God and Larry Ellison: God Doesn’t Think He’s Larry Ellison” stated, “Oracle is Larry Ellison, and Larry Ellison is Oracle.”
- Marc Benioff, CEO of Salesforce.com, who worked at Oracle and got funding for his company from Ellison stated, “There always has been & always will be, on CEO at Oracle. ‘All sw &



hw engineering functions will continue to report to @larryellison.”

90. Defendant Catz is beholden to Ellison and incapable of objectively evaluating matter concerning Ellison. She is a close aide to Ellison who has been described in the media as Ellison’s “secretive but effective right hand” and “Ellison’s ultra-effective consigliere.” Adam Lashinsky, Oracle’s Enforcer – Safra Catz, CNNMoney, Sept. 10, 2009 (available online at [http://money.cnn.com/2009/09/08/technology/oracle\\_safra\\_catz.fortune/index.htm](http://money.cnn.com/2009/09/08/technology/oracle_safra_catz.fortune/index.htm)) . According to the Southwick biography, Catz and Ellison once dated. Southwick, *supra*, at 4297. Matthew Symonds wrote in his Ellison biography that Catz has “a degree of loyalty to her boss that transcended any personal agenda of her own.” Ellison himself has stated that he and Catz “share a high-bandwidth communications link,” that they “finish each other’s sentences” and that he relies on her as his “chief confidante and counselor.” *Id.* at 294. As explained in the Symonds biography, Catz has said that, “I came in [to Oracle] with absolutely no agenda other than to help Larry. That actually makes my job incredibly easy. If Larry wants something done, now it happens because I’m going to check that it has.” *Id.* at 154.

91. Catz’s power and status within Oracle derive from her close personal relationship and overwhelming loyalty to Ellison. Henley was quoted in an August 14, 2006 Forbes article, titled “Irreplacable?” as saying that, “[Catz’s] 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." Victoria Murphy Barrett, Irreplaceable? Forbes, Aug. 14, 2006 (available at: <http://www.forbes.com/forbes/2006/0814/082.html>). Catz herself appears to agree with this assessment. She is quoted in the Symonds biography as stating, "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." Symonds, *supra*, at 295. While this statement was made while Catz was Co-President under then-CEO Ellison, as discussed above, Ellison still holds the reins at Oracle in his CTO role. Catz is fiercely protective of Ellison—and her relationship with him, and before Oracle went public with the news that Hurd was joining the Company, Safra spent six hours with Hurd and told him "he wouldn't live long enough to regret getting between Larry and herself or attempting to unseat Larry." "The Redemption of Oracle's Mark Hurd," *Fortune*, June 08, 2015 (available at: <http://fortune.com/2015/06/08/redemption-of-mark-hurd-oracle/>).

92. Catz served on the Board during the period when the Company took steps to acquire NetSuite. Catz was not independent because she was a highly compensated senior officer in a Company controlled by Ellison and was extremely loyal to Ellison. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

93. Hurd and Ellison are close personal friends, both are avid tennis players and Hurd often plays tennis at Ellison's house. "Oracle Chief Faults H.P. Board for Forcing Hurd's Resignation," *The New York Times*, Aug. 9, 2010. When Hurd was forced to resign as CEO of Hewlett Packard in 2010 due to expense-account violations and in the wake of sexual harassment allegations, Ellison not only scooped Hurd up and named him as Co-President alongside Catz (the current-Co-President Charles Phillips resigned when Hurd was appointed president), but publicly defended him. In an email to *The New York Times*, Ellison said, "The HP board just made the worst personnel decision since the idiots on the Apple board fired Steve Jobs [Ellison's long-time next-door neighbor and best friend] many years ago.

94. Henley is Vice Chairman of Oracle. He has served in many senior management positions and continues to serve on Oracle's Executive Management Committee. As one of Ellison loyalists, Henley cannot consider independently a demand or matters concerning Ellison.



95. Boskin and Garcia-Molina are employed at Stanford University (“Stanford”), which has close ties to Ellison and Oracle:

- Ellison’s The Lawrence Ellison Foundation has made nearly \$3 million in donations to Stanford in the past 3 years.
- Oracle has made donations to Stanford each year for at least the past 10 consecutive years, and in fiscal year 2016 alone has donated between \$19 and \$30 million to Stanford.
- According to Oracle’s Annual Proxy Statement, for at least the past 10 years, Stanford has received various donations from Board members, and Board Members (in addition to Boskin and Garcia-Molina) have served and continue to serve on advisory or oversight boards or are otherwise employed part-time by Stanford University.
- Oracle is Stanford University’s Strategic Partner.
- Oracle is a founding member of the Stanford Medicine Corporate Partners program, which supports the development of the new Stanford Hospital, pursuant to which Oracle has granted Stanford \$25 million over 10 years.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

97. Ellison and Oracle maintain close ties to Stanford University that prevent Garcia-Molina and Boskin from independently evaluating matters concerning Ellison. For example, as recounted by the Delaware Court of Chancery in connection with prior derivative litigation regarding Oracle, the Ellison Medical Foundation (now re-named The Lawrence Ellison Foundation) has made approximately \$10 million in grants to Stanford. *See In re Oracle Corp. Deriv. Litig.*, 824 A.2d 917, 932 (Del. Ch. 2003). The directors with ties to Stanford University may believe that their continued employment there or service on boards and committees result in part from such donations to Stanford and thus, those directors may not be able to act independently from (or adversely to) Oracle (and Ellison).

98. Additionally, Boskin, is a Senior Fellow and Steering Committee member of the Stanford Institute for Economic Policy Research, to which Oracle has consistently made yearly donations of between \$5,000 and \$20,000 for at least the years 2011-2015. Boskin is also himself a donor to Stanford, both individually (including a donation credited on the Stanford Athletics with enabling website visitors the ability to view any of six live tennis matches) and through the Koret Foundation (which has donated at least \$4 million to Stanford since he became President in 2014, and as recently as June 2016 announced it would donate \$50 million to 12 schools, including Stanford).





102. In addition to these social and business ties to Ellison, Berg also has ties to Stanford. [REDACTED]

103. Berg also has significant ties to Ellison's two children, Megan Ellison and David Ellison, both of whom have a significant interest in the Transaction. [REDACTED]

[REDACTED]

104. [REDACTED]

ICM represented David Ellison in his initial interest in an acting career. When David Ellison was approached about financing "Flyboys," "[David] Ellison approached his father [Larry Ellison] and, with the help of Jeffrey Berg at International Creative Management, eventually fashioned a deal," which accounted for "less than 30%' of the \$60 million in production costs." See "A wing and a player; David Ellison just wanted to invest in 'Flyboys.' Who knew he'd become its star," *Los Angeles Times*, Aug. 24, 2005. ICM also acted as the U.S. sales agent for "Flyboys," and Berg himself organized the party for "Flyboys," held on Larry's

Ellison's yacht at the time, the Rising Sun. See "Dean Devlin's sales pitch for 'Flyboys' gains altitude," *Los Angeles Times*, May 20, 2005.

105. Further, David Ellison and Megan Ellison are now prominent movie producers: David Ellison is the founder of Skydance Productions, which raised \$350 million to co-finance and co-produce films with Paramount Pictures and is best known for producing high-profile box-office films such as "Star Trek Into Darkness," "World War Z," "Mission Impossible: 4," "G.I. Joe: Retaliation" and "Jack Ryan: Shadow Recruit"; and Megan Ellison is the founder of Annapurna Productions, best known for critically-acclaimed and high-grossing films, "True Grit" (co-produced by Skydance Productions), "Zero Dark Thirty," "American Hustle," "Her," and "Foxcatcher." Meanwhile, despite a lengthy career as an agent, Berg was essentially ousted from ICM in 2012 after a bitter power struggle with ICM founding partner Chris Silberman, started his own entertainment agency Resolution in 2013, which shuttered within 18 months, and now runs a small agency Northside Services, LLC. According to company information database buzzfile.com, Northside Services, LLC is currently estimated to have 4 employees and annual revenues of \$220,000. See Profile of Northside Services, LLC (available at: <http://www.buzzfile.com/business/Northside-Services,-LLC-424-274-4200>).

106. Bingham also has ties to Ellison. Until recently, Bingham had been a long-time member of the Independence Committee, which continuously approves conflicted transactions with Ellison and his affiliated companies. Bingham also served on the Independence Committee during the process leading to the Transaction and approved the two deals with NetSuite. Additionally, while Bingham was Executive Chairman of Cadence Design Systems, Inc., Cadence purchased software and services from Oracle for several years. In addition, from at least 2005 through 2008, Bingham's daughter was a full-time employee of Oracle. [REDACTED]

107. Bingham also has a long-standing relationship with Ellison's "father figure" Lucas, which spans at least 25 years. During their relationship, Bingham has made a half dozen investments in limited partnerships with Lucas. In addition, Bingham donated a half million dollars to Santa Clara University to build a new business school building that would be named after Lucas. These ties between Bingham and Ellison (via Oracle, Stanford and Lucas) represent a conflict of interest that prevents Bingham from independently considering a demand.

108. Chizen has a direct interest in the Transaction, which renders him non-independent in matters concerning Ellison. [REDACTED]



[REDACTED]

[REDACTED] Additionally, Chizen has ties to Stanford, which render him further non-independent. Chizen was featured as a speaker in a Stanford course offered on Cloud computing (as a collaboration between The Stanford Center for Professional and the Stanford Computer Science Department), which was taught by former Oracle On Demand president Timothy Chou (whose bio lists him as having been a leader in bringing enterprises to the cloud since 1999, when he returned to Oracle to work for Ellison). The Chizen Family Foundation, of which Chizen is President and a Director, has donated to Stanford Hospital in at least 2013 and 2014.

109. As detailed above in ¶13, Conrades' service on the heavily-conflicted Independence Committee (along with Berg, Bingham (until November 2016) and Garcia-Molina) that consistently approves self-interested transactions between Oracle and Ellison's other companies, and which approved self-interested transactions between Oracle and NetSuite during the Transaction process, render Conrades unable to fairly evaluate the Transaction or matters concerning Ellison.

110. As detailed above in ¶14, James' ties to Ellison and Oracle, through their close partnership with her longtime employer, Intel, prevented James from fulfilling her role on the Special Committee and rendered her unable to independently evaluate the Transaction or consider matters concerning Ellison.

111. As detailed above in ¶¶15-18, Panetta's ties to ██████████ Ellison and to Ellison's daughter, Megan Ellison, prevented Panetta from fulfilling his role on the Special Committee and rendered him unable to independently evaluate the Transaction and consider matters concerning Ellison.

112. Seligman and her husband have ties to Ellison, which rendered her unable to independently evaluate matters concerning Ellison. Seligman and her husband, Ernest von Simson ("von Simson"), co-founded the Research Board, a private sector think tank and forum, serving top Chief Information Officers of over 100 of the largest firms in North America and Europe, and Ostriker von Simson, a consultancy that works with large global enterprises to advise them on choosing and deploying technologies and software, which gave them an insider look at the IT industry. Ellison is one of the credited guest speakers to have spoken before both the Research Board and the CIO Strategy Exchange (which is chaired by Ostriker von Simson). Through their co-founded entities, Seligman and von Simson came to know and admire the leadership "giants" of the IT sector, including Ellison. In von Simson's book, "The Limits of Strategy: Lessons in Leadership from the Computer Industry," von Simson deems Ellison one of the "Star Walkers," along with Michael Dell, Steve Jobs, Scott McNealy and Bill Gates, all of whom are central to the book's narrative.

113. Additionally Seligman and her husband own two condos on the 140-square-mile island of Lanai in Hawaii, which Ellison acquired in 2012 for \$300 million. As a result of Ellison's purchase of Lanai, Ellison owns nearly everything on the island, including many of the commercial buildings, homes, and apartments, the Four Seasons hotels and golf courses, the water company and utilities, half the roads, one of the two grocery stores, the community center and pool, the movie theater and some 88,000 acres of land (2% of the island is owned by the government or by longtime Lanai families). Ellison formed Pulama Lanai to run the operations of the island and which employs a majority of the adults on the island. Pulama Lanai has been reported to be a vast and mostly uncommunicative force. See "Larry Ellison Bought an Island in Hawaii, Now What?" *The New York Times*, Sept. 23, 2014. At the time of Ellison's Lanai purchase Seligman's husband, Ernest von Simson was the long-time President of their condo association (Ernest von Simson remains Secretary and Treasurer of the condo association). Seligman's condos are located 1.1 miles (driving distance) from the Four Seasons Resort Lanai and overlook one of the golf courses. With ownership of these residences comes the eligibility to become a member of the Island Club which provides access to all Four Seasons' facilities and golf courses for half price membership.



114. Seligman and her husband are also one of four couples making up the “Champion” donors category (the highest donor circle for individual donors) to the TriLanai, which offers races on the Hawaiian Island of Lanai and is sponsored in part by Ellison-owned Pulama Lanai (that runs the operations of the island). TriLanai also lists Ellison-owned hotels, the Four Seasons Resort Lanai and Hotel Lanai, as recommended accommodations. The other two members of the condo association Board where Seligman lives are also sponsors of the TriLanai. For all of the reasons set forth in Paragraphs 112-114, Seligman cannot independently consider a demand.

115. The Individual Defendants’ loyalties to Ellison also result from the lucrative compensation they receive, and have received, from their membership on the Board and various Board committees. Former Oracle President and Chief Operating Officer Ray Lane, speaking of himself and Oracle Chairman of the Board Henley, has said, “I think Larry bought both of us. I think it’s an MO – Larry will first charm you and then he’ll buy you.” Symonds, *supra*, at 97.

116. During fiscal 2016, each of the non-employee directors received an annual retainer of \$52,500 for serving on the Board, and the applicable retainers and fees set forth below for serving as a Chair or Vice Chair or as a member of one or more Board committees:

Annual Committee Member Retainers:	
F&A Committee	\$ 25,000
Compensation Committee	\$ 25,000
Governance Committee	\$ 15,000
Independence Committee	\$ 15,000
Additional Annual Retainers for Committee Chairs:	
F&A Committee (Chair and Vice Chair)	\$ 25,000
Compensation Committee	\$ 25,000
Governance Committee	\$ 15,000
Independence Committee	\$ 15,000
Fee per Board Meeting:	
Regular Meeting	\$ 3,000
Special Meeting	\$ 2,000
Fee per Committee Meeting:	
F&A Committee (other than Earnings Review Meetings)	\$ 3,000
F&A Committee Earnings Review Meeting	\$ 2,000
Compensation Committee	\$ 3,000
Governance Committee	\$ 2,000
Independence Committee	\$ 2,000

117. Oracle's non-employee directors also participate in the Company's Amended and Restated 1993 Directors' Stock Plan (the "Directors' Plan") which provides for stock options, restricted stock or other equity-based grants and awards to directors for their services. Non-employee directors currently receive the following grants of options to purchase Oracle's common stock under the Directors' Plan:

- (a) Options to purchase 60,000 shares of our common stock, granted on the date an individual becomes a director, and
- (b) Options to purchase 45,000 shares of our common stock (or 11,250 RSUs), granted on May 31 of each year, provided such

director has served on the Board for at least six months as of the date of the grant.

118. Oracle makes additional annual grants of options to non-employee directors who also serve as the Chair or Vice Chair of certain committees of the Board. Each of these grants is made on May 31 of each year to the director who, as of the date of grant, had served as a member of the relevant committee for one year (or, in the case of the Vice Chair of the F&A Committee, served as Vice Chair of the F&A Committee for six months). During fiscal 2016, the following additional option grants were made:

F&A Committee Chair	45,000 shares (or 11,250 RSUs)
F&A Committee Vice Chair	30,000 shares (or 7,500 RSUs)
Compensation Committee Chair	45,000 shares (or 11,250 RSUs)
Governance Committee Chair	15,000 shares (or 3,750 RSUs)
Independence Committee Chair	15,000 shares (or 3,750 RSUs)

All options granted to Oracle's non-employee directors vest 25% per year over four years on each anniversary of the date of grant.

119. The following table provides summary information concerning cash and other compensation Oracle paid to non-employee directors for fiscal 2016 alone. As further described above, non-employee directors receive cash retainers for Board membership, committee membership and committee chairmanship, cash fees for Board and committee meetings attended, and option grants for Board membership and committee chairmanship. The following Oracle non-employee directors serve on more than one committee: Berg (Governance and Independence



Committees), Bingham (F&A, Compensation and Independence Committees), Boskin (F&A and Governance Committees), Chizen (F&A and Governance Committees), and Conrades (Compensation and Independence Committees).

<b>Name</b>	<b>Fees Earned or Paid in Cash</b>	<b>Stock Awards</b>	<b>Option Awards</b>	<b>Total</b>
Jeffrey S. Berg	\$122,536	\$389,862	--	\$512,398
H. Raymond Bingham	\$204,040	\$686,862	--	\$890,902
Michael J. Boskin	\$176,464	\$547,628	--	\$724,092
Bruce R. Chizen	\$187,005	\$529,056	--	\$716,061
George H. Conrades	\$134,500	\$334,145	--	\$468,645
Hector Garcia-Molina	\$91,500	\$334,145	--	\$425,645
Renee J. James	\$51,847	\$421,867	\$74,291	\$548,005
Leon E. Panetta	\$90,536	\$334,145	--	\$424,681
Naomi O. Seligman	\$106,500	\$334,145	--	\$440,645

120. The following table provides additional information concerning the total stock option awards that Oracle's non-employee directors had outstanding at the end of 2016:

<b>Name</b>	<b>Total Unvested RSUs Outstanding at 2016 Fiscal Year End (Shares)</b>	<b>Total Stock Option Awards Outstanding at 2016 Fiscal Year End (Shares)</b>
Jeffrey S. Berg	14,064	480,000
H. Raymond Bingham	27,189	537,500
Michael J. Boskin	22,267	675,000
Bruce R. Chizen	21,798	431,250
George H. Conrades	12,657	168,750
Hector Garcia-Molina	12,657	360,000
Renee J. James	10,781	9,375
Leon E. Panetta	12,657	37,500
Naomi O. Seligman	12,657	362,500

121. Oracle's non-employee directors have made millions of dollars through their Board service. The following table provides information concerning the amount that Oracle's non-employee directors have received in fees, as well as the estimated value of options that they have received, over the past five years.

<b>Name</b>	<b>Total 2011-2016 Fees</b>	<b>Total 2011-2016 RSU Awards</b>	<b>Total 2011-2016 Option Awards</b>	<b>Total 2011 - 2016 Estimated Director Compensation</b>
Jeffrey S. Berg	\$709,661	\$634,493	\$1,637,144	\$2,981,228
H. Raymond Bingham	\$1,275,317	\$1,257,668	\$3,323,840	\$5,856,825
Michael J. Boskin	\$1,128,130	\$1,036,891	\$3,026,206	\$5,191,227
Bruce R. Chizen	\$1,181,198	\$1,018,319	\$3,102,050	\$5,301,567
George H. Conrades	\$806,264	\$578,776	\$1,637,144	\$3,022,184
Hector Garcia-Molina	\$608,723	\$578,776	\$1,637,144	\$2,824,643
Renee J. James	\$51,847	\$421,867	\$74,291	\$548,005
Leon E. Panetta	\$114,640	\$578,776	\$323,105	\$1,016,521
Naomi O. Seligman	\$694,000	\$578,776	\$1,637,144	\$2,909,920

122. The total amounts of the fees earned or paid to the non-employee directors, along with the option awards and grants to those directors, are of such total magnitude that they are material to each of the non-employee directors (and would indeed be material to just about anyone outside the small group of super-rich individuals including Ellison). Similarly, the number of the stock options outstanding held by each of these directors at the end of 2016 is of such magnitude that these options are material to each of the directors.



123. As a result of Ellison's control over the Board (and executive positions) and control over the fees and stock options awarded to directors and executives, the non-employee directors, who were well-compensated for their loyalty to Ellison in 2016, and were likewise well-compensated in prior years, supinely defer to Ellison in order to keep their positions and the cash and options that are awarded to them. Essentially, these directors have a financial interest in each transaction proposed by Ellison or designed to benefit Ellison – the directors' personal stake in those transactions is the amounts they are paid in fees and stock option awards for their service at Oracle. As the directors know, if they fail to approve Ellison's proposals or otherwise challenge him, they will be removed from their lucrative positions on the Board and will therefore stop receiving the cash and options paid to them for Board and committee service.

124. Additionally, the non-employee directors, if removed from the Board, would lose a substantial portion of the stock options and RSUs already granted to them. The options vest 25% a year from the date of the grant, and can be exercised only if the respective director remains on the Board. Additionally, the RSUs vest on the first anniversary of the date of grant and can only be exercised if the respective director remains on the Board. Thus, disloyalty has a high additional price for the non-employee directors – the amount of the respective director's unvested stock options. The following table provides information on the unvested



RSUs and stock options held by each of Oracle's non-employee directors at the time of the Transaction.

<b>Name</b>	<b>Total Unvested RSUs Outstanding at Fiscal 2016 Year End (Shares)</b>	<b>Total Stock Option Awards Outstanding at Fiscal 2016 Year End (Shares)</b>
Jeffrey S. Berg	14,064	480,000
H. Raymond Bingham	27,189	537,500
Michael J. Boskin	22,267	675,000
Bruce R. Chizen	21,798	431,250
George H. Conrades	12,657	168,750
Hector Garcia-Molina	12,657	360,000
Renee J. James	10,781	9,375
Leon E. Panetta	12,657	37,500
Naomi O. Seligman	12,657	362,500

125. Ellison, Catz, Henley and Hurd hold (and/or held) executive positions at Oracle, and are conflicted as a result of the significant financial compensation and benefits they receive from their respective positions at the Company and on the Board.

126. Catz and Hurd received the following compensation, bonus and stock option awards during fiscal year 2016.

	Salary	Stock Awards	Option Awards	Non-Equity Incentive Plan Comp.	All Other Comp.	Total
Catz	\$950,000	\$21,870,000	\$18,103,275	--	\$20,537	\$40,943,812
Hurd	\$950,000	\$21,870,000	\$18,103,275	--	\$198,621	\$41,121,896

127. In 2016, Catz and Hurd had outstanding unvested stock options awarded in prior years, as set forth below.

Name	Total Outstanding and Unvested Stock Awards As Of May 31, 2016 (Shares)	Total Outstanding and Unvested Stock Options As Of May 31, 2016 (Shares)	Approximate Value Of Outstanding and Unvested Stock Options As Of May 31, 2016 <sup>3</sup>
Catz	1,078,123	8,062,500	\$82,156,875
Hurd	1,078,123	8,062,500	\$82,156,875

128. From 2004 to 2014, Henley was Executive Chairman at Oracle. When Ellison stepped down from CEO to assume the CTO position in 2014, Ellison assumed the Chairman position and Henley was demoted to Vice Chairman of Oracle. While Oracle no longer publishes Henley's compensation or outstanding unvested stock options, as recently as fiscal year 2011, Henley received the following compensation and stock option awards.

	Salary	Option Awards	Non-Equity Incentive Plan Comp.	All Other Comp.	Total
Henley	\$650,000	\$2,572,080	\$901,486	\$30,553	\$4,154,119

<sup>3</sup> The approximate value of the unvested equity awards is calculated based on the stock-based compensation expense values disclosed by Oracle in its Schedule 14A Proxy Statements.

129. Henley also had the following unvested stock options awarded in prior years outstanding in fiscal year 2011:

Name	Total Outstanding and Unvested Stock Options As Of June 29, 2011 (Shares)	Approximate Value Of Outstanding and Unvested Stock Options As Of June 29, 2011 <sup>4</sup>
Henley	1,000,000	\$11,333,000

130. Like the options awarded to Oracle's non-employee directors, the options awarded to Oracle's executives vest 25% per year over four years on each anniversary of the date of grant. Additionally, the RSUs vest on the first anniversary of the date of grant. Any unvested equity awards expire if the director or executive leaves Oracle or is removed. Thus, Oracle directors and executives have an especially powerful incentive to avoid taking any action that could jeopardize their standing with Ellison or their positions at Oracle, for fear of losing the right to exercise unvested stock options worth huge amounts of money. Like the non-employee directors, the executive directors defer to Ellison in order to retain their positions at Oracle so that the options granted to them vest. In this fashion, the executive directors, like the non-employee directors, treat the options granted to them as being material to them.

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<sup>4</sup> The approximate value of the unvested stock options is calculated as the difference between the price of Oracle stock on the date of the Transaction and the option exercise price as provided in Oracle's Form 14A Proxy Statement for the Period Ending October 12, 2011.



131. Under these circumstances, the Oracle Board cannot be expected to bring the claims asserted herein, and the actions of the Individual Defendants challenged herein are not protected from judicial scrutiny. Demand is therefore excused.

**CAUSE OF ACTION**

**COUNT I**

**BREACH OF FIDUCIARY DUTY AGAINST ALL INDIVIDUAL DEFENDANTS**

132. Plaintiff realleges the preceding paragraphs as set forth above and incorporate them herein by reference.

133. The Individual Defendants, as Directors of Oracle, are fiduciaries of the Company and its stockholders. As such, they owe the Company the highest duties of good faith, fair dealing, due care, and loyalty.

134. The Individual Defendants have breached their duty of loyalty by elevating and favoring the interests of Ellison over the interests of Oracle and its other stockholders. In the shadow of Ellison's control and by virtue of their relationships with Ellison, the Individual Defendants were rendered unable to evaluate and negotiate independently the conflicted Transaction and instead took positions that favored Ellison.

135. Ellison stood on both sides of the Transaction and, taking advantage of his previous misjudgment, generated the idea of Oracle acquiring NetSuite

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

136. The Individual Defendants have also breached their fiduciary duties by either failing to fairly evaluate the Transaction and/or permitting the purchase of NetSuite at an excessive and inequitable price, rather than maximizing the value of Oracle and seeking to pay as little as possible for NetSuite.

137. Additionally, in contemplating, planning, and/or effecting the foregoing conduct, and consciously and deliberately serving the interests of Ellison to the detriment of Oracle and its other stockholders, the Individual Defendants breached their duty of good faith toward, and acted in bad faith to, the Company.

138. As a result of these actions of the Individual Defendants, the Company has been damaged.

139. Plaintiff has no adequate remedy at law.

## **COUNT II**

### **BREACH OF FIDUCIARY DUTY AGAINST ELLISON**

140. Plaintiff realleges the preceding paragraphs as set forth above and incorporate them herein by reference.



141. Defendant Ellison, as a controlling stockholder, is a fiduciary of the Company and its stockholders. As such Ellison owes them the highest duties of good faith, fair dealing, due care, and loyalty.

142. Defendant Ellison breached his duty of loyalty by elevating and favoring his interests over the interests of Oracle and its other stockholders.

143. Defendant Ellison also breached his fiduciary duties by using his control over Oracle and the Individual Defendants to cause the Company to acquire NetSuite at an excessive price, to the detriment of the Company.

144. Additionally, Defendant Ellison, in contemplating, planning, and/or effecting the foregoing conduct and in pursuing, negotiating and structuring the Transaction from both sides of the deal, and consciously and deliberately serving his interests to the detriment of Oracle and its other stockholders, Ellison breached his duty of good faith toward, and acted in bad faith to, the Company.

145. As a result of the actions of Ellison, the Company has been damaged.

146. Plaintiff has no adequate remedy at law.

### **COUNT III**

#### **BREACH OF FIDUCIARY DUTY AGAINST ELLISON AND CATZ**

147. Plaintiff realleges the previous paragraphs set forth above and incorporate them herein by reference.

148. Ellison and Catz, as executive officers of Oracle, are fiduciaries of the Company and its stockholders. As such, they owe the Company the highest duties of good faith, fair dealing, due care, and loyalty.

149. Ellison and Catz have breached their duty of loyalty by elevating and favoring the interests of Ellison over the interests of Oracle and its other stockholders. The conduct of Ellison and Catz, as officers of Oracle is not shielded by 8 *Del. C.* § 102(b)(7).

150. Ellison and Catz have also breached their fiduciary duties by initiating, negotiating and facilitating the Transaction and permitting the purchase of NetSuite at an excessive and inequitable price.

151. Additionally, in contemplating, planning, and/or effecting the foregoing conduct, and consciously and deliberately serving the interests of Ellison to the detriment of Oracle and its other stockholders, Ellison and Catz breached their duty of good faith toward, and acted in bad faith to, the Company.

152. As a result of these actions of Ellison and Catz, the Company has been damaged.

153. Plaintiff has no adequate remedy at law.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (a) for an order declaring that the Individual Defendants breached their fiduciary duties to the Company;
- (b) for an order reforming or rescinding the Transaction;

- (c) for an order awarding damages, together with pre- and post-judgment interest to the Company;
- (d) an order requiring the immediate disgorgement of all profits, benefits and other compensation obtained by Ellison as a result of his breaches of fiduciary duties;
- (e) for an order requiring the immediate disgorgement of all fees and other compensation earned by the Individual Defendants as a result of their service on Oracle's Board or any Board Committee;
- (f) for Plaintiff's costs and expenses incurred in this action, including, but not limited to, experts' and attorneys' fees; and
- (g) for such other and further relief as may be just and proper.

DATED: May 3, 2017

CHIMICLES & TIKELLIS LLP

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**Public version dated:**

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