

1 Rosemary M. Rivas (SBN 209147)
rrivas@zlk.com

2 **LEVI & KORSINSKY LLP**
44 Montgomery Street, Suite 650
3 San Francisco, CA 94104
Telephone: (415) 291-2420
4 Facsimile: (415) 484-1294

5 *Attorneys for Plaintiff*

6 *[Additional counsel on signature page]*

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 ROBERT BERG, On Behalf of Himself and
All Others Similarly Situated,

11 Plaintiff,

12 v.

13 XACTLY CORPORATION, CHRISTOPHER
14 W. CABRERA, JOHN P. WARD, JR.,
DAVID W. PIDWELL, NEAL DEMPSEY,
15 GERALD S. CASILLI, EARL E. FRY,
CAROL MILLS, LAUREN FLAHERTY,
16 SCOTT MCGREGOR, EXCALIBUR
PARENT LLC, EXCALIBUR MERGER
17 SUB, INC., AND VISTA EQUITY
PARTNERS FUND VI, L.P.,

18 Defendants.
19

Case No. 5:17-cv-3783

CLASS ACTION

**COMPLAINT FOR VIOLATION OF
THE SECURITIES EXCHANGE ACT
OF 1934**

JURY TRIAL DEMANDED

20 Plaintiff, by and through his attorneys, alleges upon personal knowledge as to himself,
21 and upon information and belief based upon, among other things, the investigation of counsel as
22 to all other allegations herein, as follows:

23 **SUMMARY OF THE ACTION**

24 1. This is a class action brought on behalf of the public stockholders of Xactly
25 Corporation (“Xactly” or the “Company”) against Xactly and its Board of Directors (the “Board”
26 or the “Individual Defendants”), to enjoin a proposed transaction announced on May 30, 2017
27 (the “Proposed Transaction”), pursuant to which Xactly will be acquired by affiliates of Vista
28 Equity Partners Fund VI, L.P.

1 2. On May 29, 2017, the Board caused Xactly to enter into an agreement and plan of
2 merger (the “Merger Agreement”) with Excalibur Parent LLC and Excalibur Merger Sub, Inc.,
3 affiliates of Vista Equity Partners Fund VI, L.P. (collectively, “Vista”). Pursuant to the terms of
4 the Merger Agreement, stockholders of Xactly will receive \$5.32 in cash and 0.2309 of a share
5 in the newly combined company for each share they own.

6 3. On June 16, 2017, defendants filed a proxy statement (the “Proxy Statement”)
7 with the United States Securities and Exchange Commission (“SEC”) in connection with the
8 Proposed Transaction.

9 4. The Proxy Statement omits material information with respect to the Proposed
10 Transaction, which renders the Proxy Statement false and misleading. Accordingly, plaintiff
11 alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act
12 of 1934 (the “1934 Act”) in connection with the Proxy Statement.

13 **JURISDICTION AND VENUE**

14 5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27
15 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the
16 1934 Act and Rule 14a-9.

17 6. This Court has jurisdiction over defendants because each defendant is either a
18 corporation that conducts business in and maintains operations within this District, or is an
19 individual with sufficient minimum contacts with this District so as to make the exercise of
20 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

21 7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the
22 transactions and wrongs complained of herein occurred in this District.

23 **PARTIES**

24 8. Plaintiff is, and has been continuously throughout all times relevant hereto, the
25 owner of Xactly common stock.

26 9. Defendant Xactly is a Delaware corporation and maintains its principal executive
27 offices at 300 Park Avenue, Suite 1700, San Jose, California 95110. Xactly’s common stock is
28 traded on the NYSE under the ticker symbol “XTLY.”

1 10. Defendant Christopher W. Cabrera (“Cabrera”) is a director, founder, and Chief
2 Executive Officer (“CEO”) of Xactly.

3 11. Defendant John P. Ward, Jr. (“Ward”) is a director of Xactly.

4 12. Defendant David W. Pidwell (“Pidwell”) is a director of Xactly.

5 13. Defendant Neal Dempsey (“Dempsey”) has served as a director of Xactly since
6 April 2008.

7 14. Defendant Gerald S. Casilli (“Casilli”) has served as a director of Xactly since
8 August 2005.

9 15. Defendant Earl E. Fry (“Fry”) is a director of Xactly.

10 16. Defendant Carol Mills (“Mills”) is a director of Xactly and has served as Chair of
11 the Board since February 2010.

12 17. Defendant Lauren Flaherty (“Flaherty”) is a director of Xactly.

13 18. Defendant Scott McGregor (“McGregor”) is a director of Xactly.

14 19. The defendants identified in paragraphs 10 through 18 are collectively referred to
15 herein as the “Individual Defendants.”

16 20. Defendant Excalibur Parent LLC is a Delaware limited liability company and a
17 party to the Merger Agreement.

18 21. Defendant Excalibur Merger Sub, Inc. is a Delaware corporation, a wholly-owned
19 subsidiary of Excalibur Parent LLC, and a party to the Merger Agreement.

20 22. Defendant Vista Equity Partners Fund VI, L.P. is a Cayman Islands exempted
21 limited partnership and a party to the Merger Agreement.

22 **CLASS ACTION ALLEGATIONS**

23 23. Plaintiff brings this action as a class action on behalf of himself and the other
24 public stockholders of Xactly (the “Class”). Excluded from the Class are defendants herein and
25 any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

26 24. This action is properly maintainable as a class action.

27 25. The Class is so numerous that joinder of all members is impracticable. As of
28 May 26, 2017, there were approximately 32,070,650 shares of Xactly common stock

1 outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout
2 the country.

3 26. Questions of law and fact are common to the Class, including, among others,
4 whether defendants violated the 1934 Act and whether defendants will irreparably harm plaintiff
5 and the other members of the Class if defendants' conduct complained of herein continues.

6 27. Plaintiff is committed to prosecuting this action and has retained competent
7 counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the
8 other members of the Class and plaintiff has the same interests as the other members of the
9 Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and
10 adequately protect the interests of the Class.

11 28. The prosecution of separate actions by individual members of the Class would
12 create the risk of inconsistent or varying adjudications that would establish incompatible
13 standards of conduct for defendants, or adjudications that would, as a practical matter, be
14 dispositive of the interests of individual members of the Class who are not parties to the
15 adjudications or would substantially impair or impede those non-party Class members' ability to
16 protect their interests.

17 29. Defendants have acted, or refused to act, on grounds generally applicable to the
18 Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on
19 behalf of the Class is appropriate.

20 **SUBSTANTIVE ALLEGATIONS**

21 **A. Background of the Company and the Proposed Transaction**

22 30. Xactly is a leading provider of enterprise-class, cloud-based, incentive
23 compensation solutions for employee and sales performance management.

24 31. Xactly's solutions allow organizations to make better strategic decisions, optimize
25 behaviors, increase sales and employee performance, improve margins, increase operational
26 efficiencies, mitigate risk, design better incentive compensation plans, and reduce error rates in
27 incentive compensation calculations.

28 32. The Company was the first 100% cloud-based, multi-tenant provider focusing

1 solely on the incentive compensation and employee and sales performance management market.
2 Xactly delivers its solutions through a Software-as-a-Service (“SaaS”) business model.

3 33. On March 3, 2016, Xactly issued a press release wherein it reported its fourth
4 quarter and full year fiscal 2016 financial results. For the fourth quarter, total revenue was
5 \$20.7 million, an increase of 30% from the fourth quarter of fiscal year 2015 total revenue of
6 \$15.9 million. Subscription revenue was \$16.3 million, an increase of 29% from the fourth
7 quarter of fiscal 2015 subscription revenue of \$12.6 million. For the full year 2016, total
8 revenue was \$76.0 million, an increase of 24% from fiscal year 2015 total revenue of
9 \$61.1 million. Subscription revenue was \$59.2 million, an increase of 25% from fiscal 2015
10 subscription revenue of \$47.3 million.

11 34. In the March 3 press release, the Company also reported several recent business
12 highlights, including that the Company posted a third consecutive quarter of accelerated revenue
13 growth since its initial public offering on June 26, 2015. Xactly ended the year with
14 266,000 subscribers, a 37% increase over last year, and 870 customers, a 20% increase over
15 fiscal 2015, with key enterprise wins in the Retail, Financial Services, Software and Technology,
16 Business Services and High Tech Manufacturing vertical markets.

17 35. With respect to the results, Individual Defendant Cabrera commented:

18 Our strong fourth quarter results capped an excellent year for Xactly[.] Our total
19 revenue and subscription revenue growth accelerated during the year,
20 demonstrating our ongoing business momentum and the value of our product
21 offerings. As a recognized leader in the industry, our robust, pure-play, cloud-
22 based product offerings backed by ten years of compensation data are
increasingly differentiating us as companies look to use incentive compensation
as a strategic lever to drive their growth. We look forward to continuing to deliver
value to our customers and extending our market leadership.

23 36. Nevertheless, the Board caused the Company to enter into the Merger Agreement,
24 pursuant to which the Company will be acquired for inadequate consideration.

25 37. To the detriment of the Company’s stockholders, the terms of the Merger
26 Agreement substantially favor Vista and are calculated to unreasonably dissuade potential suitors
27 from making competing offers.

28 38. The Individual Defendants have all but ensured that another entity will not

1 emerge with a competing proposal by agreeing to a “no solicitation” provision in the Merger
2 Agreement that prohibits the Individual Defendants from soliciting alternative proposals and
3 severely constrains their ability to communicate and negotiate with potential buyers who wish to
4 submit or have submitted unsolicited alternative proposals.

5 39. Further, the Company must promptly advise Vista of any proposals or inquiries
6 received from other parties.

7 40. Moreover, the Merger Agreement contains a highly restrictive “fiduciary out”
8 provision permitting the Board to withdraw its approval of the Proposed Transaction under
9 extremely limited circumstances, and grants Vista a “matching right” with respect to any
10 “Superior Proposal” made to the Company.

11 41. Further locking up control of the Company in favor of Vista, the Merger
12 Agreement provides for a “termination fee” of \$18.5 million payable by the Company to Vista if
13 the Individual Defendants cause the Company to terminate the Merger Agreement.

14 42. By agreeing to the deal protection devices, the Individual Defendants have locked
15 up the Proposed Transaction and have precluded other bidders from making successful
16 competing offers for the Company.

17 43. Additionally, Vista entered into voting agreements with entities affiliated with
18 Alloy Ventures, entities affiliated with Bay Partners, and entities affiliated with Rembrandt
19 Venture Partners, pursuant to which they have agreed to vote their Company shares in favor of
20 the Proposed Transaction. Accordingly, approximately 23% of the outstanding shares of
21 Company common stock are already locked up in favor of the merger.

22 44. The merger consideration is inadequate because, among other things, the intrinsic
23 value of the Company is materially in excess of the amount offered in the Proposed Transaction.

24 45. Accordingly, the Proposed Transaction will deny Class members their right to
25 share proportionately and equitably in the true value of the Company’s valuable and profitable
26 business, and future growth in profits and earnings.

27
28

1 ***The Proxy Statement Omits Material Information, Rendering It False and Misleading***

2 46. Defendants filed the Proxy Statement with the SEC in connection with the
3 Proposed Transaction.

4 47. The Proxy Statement omits material information with respect to the Proposed
5 Transaction, which renders the Proxy Statement false and misleading.

6 48. First, the Proxy Statement omits material information regarding the analyses
7 performed by the Company's financial advisor, J.P. Morgan Securities LLC ("J.P. Morgan").

8 49. With respect to J.P. Morgan's *Discounted Cash Flow Analysis*, the Proxy
9 Statement fails to disclose: (i) the range of terminal values of Xactly; (ii) the inputs and
10 assumptions underlying the range of discount rates from 9.5% to 11.5%; (iii) J.P. Morgan's basis
11 for applying perpetuity growth rates ranging from 2.5% to 3.5%; and (iv) Xactly's cash and debt.

12 50. When a banker's endorsement of the fairness of a transaction is touted to
13 stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and
14 range of ultimate values generated by those analyses must also be fairly disclosed.

15 51. The omission of this material information renders the Proxy Statement false and
16 misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) "Background
17 of the Merger"; (ii) "Recommendation of the Board of Directors and Reasons for the Merger";
18 (iii) "Fairness Opinion of J.P. Morgan Securities LLC"; and (iv) "Xactly Financial Projections."

19 52. Second, the Proxy Statement omits material information regarding potential
20 conflicts of interest of the Company's officers and directors.

21 53. Specifically, the Registration Statement fails to disclose the timing and nature of
22 all communications regarding future employment and/or directorship of Xactly's officers and
23 directors, including who participated in all such communications.

24 54. Communications regarding post-transaction employment during the negotiation of
25 the underlying transaction must be disclosed to stockholders. This information is necessary for
26 stockholders to understand potential conflicts of interest of management and the Board, as that
27 information provides illumination concerning motivations that would prevent fiduciaries from
28 acting solely in the best interests of the Company's stockholders.

1 55. The omission of this material information renders the Proxy Statement false and
2 misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) “Interests of
3 Xactly’s Directors and Executive Officers in the Merger”; (ii) “Background of the Merger”; and
4 (iii) “Recommendation of the Board of Directors and Reasons for the Merger.”

5 56. Third, the Registration Statement fails to disclose whether any non-disclosure
6 agreements executed by Xactly and the prospective bidders contained standstill and/or “don’t
7 ask, don’t waive” provisions that are or were preventing those counterparties from submitting
8 superior offers to acquire the Company.

9 57. Without this information, stockholders may have the mistaken belief that, if these
10 potentially interested parties wished to come forward with a superior offer, they are or were
11 permitted to do so, when in fact they are or were contractually prohibited from doing so.

12 58. The omission of this material information renders the Proxy Statement false and
13 misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) “Background
14 of the Merger”; and (ii) “Recommendation of the Board of Directors and Reasons for the
15 Merger.”

16 59. Fourth, the Proxy Statement omits material information regarding potential
17 conflicts of interest of J.P. Morgan.

18 60. Specifically, the Proxy Statement fails to disclose the amount of compensation
19 J.P. Morgan has received for the past services it performed for Xactly.

20 61. Additionally, the Proxy Statement fails to disclose the amount of compensation
21 J.P. Morgan received for acting as a bookrunner and lead arranger for portfolio companies of
22 Excalibur Parent, LLC that were unrelated to the Proposed Transaction.

23 62. Full disclosure of investment banker compensation and all potential conflicts is
24 required due to the central role played by investment banks in the evaluation, exploration,
25 selection, and implementation of strategic alternatives.

26 63. The omission of this material information renders the Proxy Statement false and
27 misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) “Background
28 of the Merger”; (ii) “Recommendation of the Board of Directors and Reasons for the Merger”;

1 and (iii) “Fairness Opinion of J.P. Morgan Securities LLC.”

2 64. The above-referenced omitted information, if disclosed, would significantly alter
3 the total mix of information available to Xactly’s stockholders.

4 **COUNT I**

5 **Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated**
6 **Thereunder Against the Individual Defendants and Xactly**

7 65. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

8 66. The Individual Defendants disseminated the false and misleading Proxy
9 Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and
10 Rule 14a-9, in light of the circumstances under which they were made, omitted to state material
11 facts necessary to make the statements therein not materially false or misleading. Xactly is liable
12 as the issuer of these statements.

13 67. The Proxy Statement was prepared, reviewed, and/or disseminated by the
14 Individual Defendants. By virtue of their positions within the Company, the Individual
15 Defendants were aware of this information and their duty to disclose this information in the
16 Proxy Statement.

17 68. The Individual Defendants were at least negligent in filing the Proxy Statement
18 with these materially false and misleading statements.

19 69. The omissions and false and misleading statements in the Proxy Statement are
20 material in that a reasonable stockholder will consider them important in deciding how to vote on
21 the Proposed Transaction. In addition, a reasonable investor will view a full and accurate
22 disclosure as significantly altering the total mix of information made available in the Proxy
23 Statement and in other information reasonably available to stockholders.

24 70. The Proxy Statement is an essential link in causing plaintiff and the Company’s
25 stockholders to approve the Proposed Transaction.

26 71. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and
27 Rule 14a-9 promulgated thereunder.

28 72. Because of the false and misleading statements in the Proxy Statement, plaintiff

1 and the Class are threatened with irreparable harm.

2 **COUNT II**

3 **Claim for Violation of Section 20(a) of the 1934 Act**
4 **Against the Individual Defendants and Vista**

5 73. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

6 74. The Individual Defendants and Vista acted as controlling persons of Xactly within
7 the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as
8 officers and/or directors of Xactly and participation in and/or awareness of the Company's
9 operations and/or intimate knowledge of the false statements contained in the Proxy Statement,
10 they had the power to influence and control and did influence and control, directly or indirectly,
11 the decision making of the Company, including the content and dissemination of the various
12 statements that plaintiff contends are false and misleading.

13 75. Each of the Individual Defendants and Vista was provided with or had unlimited
14 access to copies of the Proxy Statement alleged by plaintiff to be misleading prior to and/or
15 shortly after these statements were issued and had the ability to prevent the issuance of the
16 statements or cause them to be corrected.

17 76. In particular, each of the Individual Defendants had direct and supervisory
18 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have
19 had the power to control and influence the particular transactions giving rise to the violations as
20 alleged herein, and exercised the same. The Proxy Statement contains the unanimous
21 recommendation of the Individual Defendants to approve the Proposed Transaction. They were
22 thus directly in the making of the Proxy Statement.

23 77. Vista also had direct supervisory control over the composition of the Proxy
24 Statement and the information disclosed therein, as well as the information that was omitted
25 and/or misrepresented in the Proxy Statement.

26 78. By virtue of the foregoing, the Individual Defendants and Vista violated
27 Section 20(a) of the 1934 Act.

28 79. As set forth above, the Individual Defendants and Vista had the ability to exercise

1 control over and did control a person or persons who have each violated Section 14(a) of the
2 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their
3 positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the
4 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are
5 threatened with irreparable harm.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, plaintiff prays for judgment and relief as follows:

8 A. Enjoining defendants and all persons acting in concert with them from proceeding
9 with, consummating, or closing the Proposed Transaction;

10 B. In the event defendants consummate the Proposed Transaction, rescinding it and
11 setting it aside or awarding rescissory damages;

12 C. Directing the Individual Defendants to file a Proxy Statement that does not
13 contain any untrue statements of material fact and that states all material facts required in it or
14 necessary to make the statements contained therein not misleading;

15 D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as
16 well as Rule 14a-9 promulgated thereunder;

17 E. Awarding plaintiff the costs of this action, including reasonable allowance for
18 plaintiff's attorneys' and experts' fees; and

19 F. Granting such other and further relief as this Court may deem just and proper.

20 **JURY DEMAND**

21 Plaintiff hereby demands a trial by jury.

22 Dated: June 30, 2017

LEVI & KORSINSKY LLP

23 By: /s/ Rosemary M. Rivas

24 Rosemary M. Rivas
25 44 Montgomery Street, Suite 650
26 San Francisco, CA 94104
27 Telephone: (415) 291-2420
28 Facsimile: (415) 484-1294

Attorneys for Plaintiff

1 **OF COUNSEL:**

2 **RIGRODSKY & LONG, P.A.**

Brian D. Long (to be admitted *pro hac vice*)

3 2 Righter Parkway, Suite 120

Wilmington, DE 19803

4 Telephone: (302) 295-5310

Facsimile: (302) 654-7530

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATION OF PLAINTIFF

I, Robert Berg (“Plaintiff”), hereby declare as to the claims asserted under the federal securities laws that:

1. Plaintiff has reviewed the complaint and authorizes its filing.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff’s counsel or in order to participate in any private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, either individually or as part of a group, and I will testify at deposition or trial, if necessary. I understand that this is not a claim form and that I do not need to execute this Certification to share in any recovery as a member of the class.
4. Plaintiff’s purchase and sale transactions in the Xactly Corporation (NYSE: XTLY) security that is the subject of this action during the class period is/are as follows:

PURCHASES

Buy Date	Shares	Price per Share
1/30/17	55	\$12.00

SALES

Sell Date	Shares	Price per Share

Please list additional transactions on separate sheet of paper, if necessary.


5. Plaintiff has complete authority to bring a suit to recover for investment losses on behalf of purchasers of the subject securities described herein (including Plaintiff, any co-owners, any corporations or other entities, and/or any beneficial owners).

6. During the three years prior to the date of this Certification, Plaintiff has not moved to serve as a representative party for a class in an action filed under the federal securities laws.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of June, 2017.



ROBERT BERG

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Robert Berg, On Behalf of Himself and All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Milwaukee County, WI (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Rosemary M. Rivas, Esq; LEVI & KORSINSKY LLP 44 Montgomery Street, Suite 650, San Francisco, CA 94104; (415) 291-2420

DEFENDANTS

XACILITY CORPORATION, CHRISTOPHER W. CABRERA, JOHN P. WARD, JR., DAVID W. PIDWELL, NEAL DEMPSEY, GERALD S. CASILLI, EARL E. FRY, CAROL MILLS, LAUREN FLAHERTY, SCOTT MCGREGOR, EXCALIBUR PARENT LLC, EXCALIBUR MERGER SUB, INC., AND VISTA EQUITY PARTNERS FUND VI, L.P.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1331

Brief description of cause:

Violations of Section Sections 14(a) and 20(a) of the Securities Exchange Act of 1934

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 06/30/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Rosemary M. Rivas

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Xactly, Bd. of Directors Facing Securities Lawsuits Over Excalibur Merger](#)
