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

10 STEVEN DEPALO, individually and on behalf of
all others similarly situated,

11 Plaintiff,

12 v.

13 XACTLY CORP., CHRISTOPHER W.
14 CABRERA, GERALD S. CASILLI, NEAL
15 DEMPSEY, LAUREN FLAHERTY, EARL E.
16 FRY, SCOTT MCGREGOR, CAROL MILLS,
17 DAVID W. PIDWELL, JOHN P. WARD,

Defendants.

Case No. 5:17-cv-03838

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
VIOLATION OF SECTIONS 14(a) AND
20(a) OF THE SECURITIES EXCHANGE
ACT OF 1934**

JURY TRIAL DEMANDED

18 Plaintiff Steven DePalo (“Plaintiff”), by his attorneys, alleges upon information and belief,
19 except for his own acts, which are alleged on knowledge, as follows:

20 **INTRODUCTION**

21 1. Plaintiff brings this action on behalf of himself and the public stockholders of Xactly
22 Corporation (“Xactly” or the “Company”) against Xactly and Xactly’s Board of Directors (the “Board”
23 or the “Individual Defendants,” as further defined below, and collectively “Defendants”) for their
24 violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”),
25 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9
26 promulgated thereunder, 17 C.F.R. § 240.14a-9, arising out of their attempt to sell the Company to
27 affiliates of Vista Equity Partners Management, LLC (“Vista”).
28

1 2. On May 30, 2017, Vista and the Company announced that they had entered into a
2 definitive agreement on May 29, 2017 (“Merger Agreement”), under which Excalibur Parent, LLC
3 (“Parent”), through its wholly owned subsidiary, Excalibur Merger Sub, Inc. (“Merger Sub”), will
4 acquire all of the outstanding shares of Xactly in an all-cash transaction (the “Proposed Transaction”).
5 If consummated, Xactly stockholders will receive \$15.65 in cash for each share of Xactly common
6 stock that they own (“Merger Consideration”). The Proposed Transaction has a total value of
7 approximately \$564 million.

8 3. On June 16, 2017, Defendants issued materially incomplete and misleading disclosures
9 in the Form PREM14A Preliminary Proxy Statement (the “Proxy”) filed with the SEC in connection
10 with the Proposed Transaction.

11 4. The Proxy is deficient and misleading because, *inter alia*, it fails to disclose material
12 information regarding GAAP reconciliation of the non-GAAP financial measures contained in the
13 Company’s projections, which were prepared by Company management and relied upon by
14 J.P. Morgan Securities, LLC (“J.P. Morgan”), the Company’s financial advisor, who used such
15 information to support its opinion on the fairness of the Proposed Transaction.

16 5. The Proxy is also deficient and misleading because it fails to provide adequate disclosure
17 of all material information relating to whether the confidentiality agreements Xactly entered into
18 contained standstill provisions, and fails to provide information pertaining to Vista’s communications
19 with anyone at Xactly concerning the possible continued employment of any Xactly officer, director,
20 or employee following the Merger, including but not limited to the timing, content, nature, parties, and
21 form of such communications.

22 6. Without additional information the Proxy is materially misleading and in violation of
23 federal securities laws.

24 7. By unanimously approving the Proposed Transaction and authorizing the issuance of
25 the Proxy, the Individual Defendants participated in the solicitation even though they knew, or should
26 have known, that the Proxy was materially false and/or misleading.

27 8. Accordingly, Plaintiff alleges herein that Defendants have breached their fiduciary
28 duties and violated Sections 14(a) and 20(a) of the Exchange Act, and Rule 14a-9 in connection with

1 the Proxy. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from
2 conducting the stockholder vote on the Proposed Transaction unless and until the material information
3 discussed below is disclosed to Xactly's stockholders or, in the event the Proposed Transaction is
4 consummated, to recover damages resulting from Defendants' violations of federal securities laws and
5 regulations.

6 **JURISDICTION AND VENUE**

7 9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331-32, pursuant to
8 15 U.S.C. § 78aa (federal question jurisdiction), as Plaintiff alleges violations of Section 14(a) and
9 20(a) of the Exchange Act.

10 10. The Court has personal jurisdiction over each Defendant because each either conducts
11 business in and maintains operations in this District or is an individual who either is present in this
12 District for jurisdictional purposes or has sufficient minimum contacts with this District as to render
13 the exercise of jurisdiction by this Court permissible under traditional notions of fair play and
14 substantial justice.

15 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (a) Xactly is
16 headquartered in this District; (b) a substantial portion of the corporate transactions and wrongs
17 complained of herein occurred here; and (c) Defendants have received substantial compensation and
18 other transfers of money here by doing business here and engaging in activities having an effect in this
19 District.

20 **PARTIES**

21 12. Plaintiff is, and has been at all relevant times, the owner of shares of common stock of
22 Xactly.

23 13. Xactly is a corporation organized and existing under the laws of the State of Delaware.
24 The Company maintains its principal executive offices at 300 Park Avenue, #1700, San Jose,
25 California, 95110. Xactly common stock trades on the New York Stock Exchange under the ticker
26 symbol "XTLY."

27 14. Defendant Christopher W. Cabrera ("Cabrera") has been Chief Executive Officer and a
28 director of the Company since March 2005.

1 15. Defendant Gerald S. Casilli (“Casilli”) has been a director of the Company since August
2 2005.

3 16. Defendant Neil Dempsey (“Dempsey”) has been a director of the Company since April
4 2008.

5 17. Defendant Lauren P. Flaherty (“Flaherty”) has served as a director of the Company since
6 March 2016.

7 18. Defendant Earl E. Fry (“Fry”) has been a director of the Company since
8 September 2005.

9 19. Defendant Scott McGregor (“McGregor”) has been a director of the Company since
10 March 2016.

11 20. Defendant Carol G. Mills (“Mills”) has served as a director of the Company and Chair
12 of the Board since February 2010.

13 21. Defendant David Pidwell (“Pidwell”) was a director of the Company from September
14 2005 through June 20, 2017.

15 22. Defendant John P. Ward (“Ward”) was a director of the Company from January 2009
16 through June 20, 2017.

17 23. Defendants Cabrera, Casilli, Dempsey, Flaherty, Fry, McGregor, Mills, Pidwell, and
18 Ward are collectively referred to as “Individual Defendants” and/or the “Board.”

19 24. Relevant non-party Parent is an affiliate of Vista that was formed on May 25, 2017.
20 Parent was created solely for the purposes of effectuating the Proposed Transaction.

21 25. Relevant non-party Merger Sub is a Delaware corporation and wholly-owned subsidiary
22 of Parent that was created for the purposes of effectuating the Proposed Transaction.

23 26. Relevant non-party Vista Fund VI has provided Parent with an equity commitment to
24 fund the aggregate purchase price, fees, and expenses to be paid at the closing of the Merger.

25 **CLASS ACTION ALLEGATIONS**

26 27. For purposes of the breach of fiduciary duties claims, Plaintiff brings this action
27 individually and as a class action on behalf of all holders of Xactly stock who are being, and will be,
28 harmed by Defendants’ actions described herein (the “Class”). Excluded from the Class are Defendants

1 herein and any person, firm, trust, corporation, or other entity related to, controlled by, or affiliated
2 with, any Defendant, including the immediate family members of the Individual Defendants.

3 28. This action is properly maintainable as a class action under Federal Rule of Civil
4 Procedure 23.

5 29. The Class is so numerous that joinder of all members is impracticable. According to the
6 Company's Form 10-Q filed on June, 8, 2017, as of May 31, 2017, Xactly had 32,140,812 shares of
7 common stock outstanding. While the exact number of Class members is presently unknown to
8 Plaintiff and can only be ascertained through discovery, Plaintiff believes that there are thousands of
9 members in this Class. All members of the Class may be identified from records maintained by Xactly
10 or its transfer agent and may be notified of the pendency of this action by mail, using forms of notice
11 similar to that customarily used in securities class actions.

12 30. There are questions of law and fact which are common to the Class and which
13 predominate over questions affecting any individual Class member. The common questions include,
14 *inter alia*, the following: (i) whether Defendants solicited stockholder approval of the Proposed
15 Transaction through a materially false or misleading Proxy in violation of federal securities laws;
16 (ii) whether Plaintiff and other Class members will suffer irreparable harm if securities laws violations
17 are not remedied before the vote on the Proposed Transaction; and (iii) whether the Class is entitled to
18 injunctive relief as a result of Defendants' wrongful conduct.

19 31. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff
20 does not have any interests adverse to the Class. Plaintiff and the other members of the Class have
21 sustained damages as a result of Defendants' wrongful conduct as alleged herein.

22 32. Plaintiff will fairly and adequately protect the interests of the Class and has retained
23 competent counsel experienced in litigation of this nature.

24 33. The prosecution of separate actions by individual members of the Class creates a risk of
25 inconsistent or varying adjudications with respect to individual members of the Class, which could
26 establish incompatible standards of conduct for Defendants.

27
28

1 34. Plaintiff anticipates that there will be no difficulty in the management of this litigation.
2 A class action is superior to other available methods for the fair and efficient adjudication of this
3 controversy.

4 35. Defendants have acted on grounds generally applicable to the Class with respect to the
5 matters complained of herein, thereby making appropriate the relief sought herein with respect to the
6 Class as a whole.

7 36. Accordingly, Plaintiff seeks injunctive and other equitable relief on behalf of himself
8 and the Class to prevent the irreparable injury that the Company's stockholders will continue to suffer
9 absent judicial intervention.

10 **FURTHER SUBSTANTIVE ALLEGATIONS**

11 ***Company Background***

12 37. Xactly is a Software-as-a-Service (SaaS) provider of incentive compensation solutions
13 for employee and sales performance management which are designed to optimize employee behavior
14 and align employee goals with company goals. The Company was founded in 2005.

15 ***The Sale Process***

16 38. In preparation for its initial public offering ("IPO") in 2015, J.P. Morgan was engaged
17 as Xactly's financial advisor and the two parties entered into an engagement letter on March 20, 2015.
18 In addition to work on Xactly's IPO, J.P. Morgan was instructed by the Board to explore potential sales
19 of Xactly.

20 39. In July 2016, representatives from Vista had an (unsolicited) introductory meeting with
21 Defendant Cabrera and Joseph Consul ("Consul"), the Company's CFO, where they presented
22 information about Vista.

23 40. In August 2016, Company management was contacted by Party B regarding a potential
24 combination. Party B indicated they could potentially submit an offer in October 2016.

25 41. On September 2, 2016, J.P. Morgan met with Company management to discuss Xactly's
26 prospects, business, and potentially reaching out to other parties, given Party B's recent interest.

27 42. On September 15, 2016, Defendant Cabrera contacted Party B's representatives and
28 they agreed to meet in October.

1 43. On September 29, 2016, Defendant Cabrera and Consul had an introductory meeting
2 with Party G, a financial sponsor, at Party G’s request, to discuss SaaS industry developments. During
3 this meeting, Company management and Party G discussed potential collaborations and opportunities
4 between the two parties and Party G relayed interest in continuing such discussions in the future.

5 44. On October 20, 2016, Defendant Cabrera and Party B held a conference call in which
6 they scheduled an in person meeting. On October 31, 2016, Defendant Cabrera, Company
7 management, and Party B met and Party B discussed a potential acquisition of Xactly. At this meeting,
8 Company management made a preliminary due diligence presentation and over the following weeks,
9 the Company and Party B exchanged various due diligence information.

10 45. On November 22, 2016, the Board held a special meeting with Wilson Sonsini Goodrich
11 & Rosati Professional Corporation (“Outside Counsel”) and J.P. Morgan. At this meeting, the Board
12 established a Transactions Committee of the Board of Directors (the “Transactions Committee”). The
13 Transaction Committee included Defendant Cabrera, Defendant Casilli, Defendant Dempsey,
14 Defendant Fry, and Defendant McGregor.

15 46. On December 6, 2016, Party B communicated to Defendant Cabrera that it would not
16 be submitting an indication of interest, but that it would reconsider in early 2017. On December 14,
17 2016, Party B communicated to Defendant Cabrera additional information regarding its decision not to
18 submit an indication of interest, such as its desire to wait and see Xactly’s financial results for the 2016
19 fiscal year.

20 47. On December 13, 2016, the Board met with Outside Counsel and Defendant Cabrera
21 gave an update on his earlier discussion with Party B and the Board discussed potential acquisitions by
22 Xactly.

23 48. On February 24, 2017, Defendant Cabrera and Party B had a phone call in which Party B
24 expressed that it was still prioritizing its interest in Xactly and that Party B was interested in conducting
25 additional financial due diligence. They agreed to schedule a follow-up due diligence meeting a few
26 weeks after this call. Party B indicated that the earliest it would consider submitting an acquisition
27 proposal was in the second quarter of Xactly’s fiscal 2018.

28

1 49. On March 1, 2017, the Company extended their engagement with J.P. Morgan by way
2 of an amendment to their prior engagement letter. On March 3, 2017, at the direction of the
3 Transactions Committee, J.P. Morgan reached out to a number of additional parties who might consider
4 making an acquisition of Xactly. Management and the Transactions Committee had decided that
5 additional outreach may motivate Party B to submit a proposal sooner.

6 50. During the week of March 6, 2017, at the direction of the Board, J.P. Morgan contacted
7 Party C, Party D, Party E, Party F, Party H, and Party I. Later in March Party C, Party D, Party F, and
8 Party H indicated to J.P. Morgan that they were not interested at that time.

9 51. On March 14, 2017, Defendant Cabrera and Company management met with Party B to
10 provide an update on Xactly's operations and no update was given regarding Party B's prior indication
11 that it would not be able to engage until the second quarter of the Company's fiscal 2018.

12 52. On March 16, 2017, Party I contacted J.P. Morgan to express interest in obtaining
13 additional information about the Company, and requested a meeting with Company management. This
14 requested meeting was scheduled for April 4, 2017. Party I and the Company negotiated and entered
15 into a mutual confidentiality agreement on March 24, 2017.

16 53. On March 19, 2017, Party E informed J.P. Morgan it was not interested in engaging in
17 a transaction with the Company.

18 54. On March 23, 2017, the Board held a meeting at which they discussed updated
19 developments relating to the sale efforts and discussed marketplace issues facing the Company, such
20 as price competition and pipeline and calculated billings pressure. The Board also discussed potential
21 acquisitions that could be made by Xactly.

22 55. On March 31, 2017, Party I informed J.P. Morgan that it needed to cancel the scheduled
23 April 4, 2017 meeting in order to focus on other strategic priorities, and it did not indicate interest in
24 rescheduling.

25 56. On an unsolicited basis, Vista contacted Xactly on April 11, 2017, and suggested a
26 dinner with Company management, and stressed that 13 of Vista's portfolio companies, in the
27 aggregate, were essentially Xactly's second largest customer. This dinner occurred with
28

1 Defendant Cabrera and Vista on April 24, 2017. They discussed entering a mutual non-disclosure
2 agreement but no proposal was submitted or discussed by Vista at that dinner.

3 57. On May 1, 2017, the Company and Vista signed a mutual non-disclosure agreement.

4 58. On May 2, 2017, the Board met and determined not to reach out to additional financial
5 sponsors as they wanted Company management to be able to concentrate on business operations.
6 However, they also determined to continue discussions with certain strategic parties, including Vista.
7 In addition, at this meeting, Company management presented their initial assessment of the recently
8 completed first fiscal quarter of the Company's fiscal 2018, ending April 30, 2017. After the meeting,
9 at the Board's direction, Company management began preparing two additional projections: (i) the
10 Updated Case (which would incorporate the fourth quarter of fiscal 2017 and the first quarter of fiscal
11 2018 into the FY2018 Original Base Case); and (ii) the Lower Growth Case (which would reflect a
12 conservative analysis of the Company's future performance).

13 59. On May 4, 2017, Company management presented business, financial, and technical
14 details to Vista at an all-day management presentation hosted by Xactly's Outside Counsel. Vista
15 conducted various due diligence requests which were addressed over the following week, including
16 during due diligence sessions on May 10 and 11, 2017.

17 60. On May 22, Defendant Cabrera met with Vista and J.P. Morgan over a dinner meeting
18 at which Vista informed Defendant Cabrera it would send an acquisition proposal that same evening.

19 61. In the evening of May 22, 2017, Vista sent a written indication of interest to the Board
20 and J.P. Morgan with a per share price of \$15.00. The indication of interest included a draft merger
21 agreement and stated that the proposal would expire on May 29, 2017, at 5:00 p.m. Pacific time. The
22 indication of interest was not subject to exclusivity prior to the signing of the merger agreement. Vista
23 again stressed its prior assertion that 13 of their 18 portfolio companies were customers of Xactly and
24 the combined businesses essentially made them Xactly's second largest customer.

25 62. On May 24, 2017, the Board met with Company management, Outside Counsel, and
26 J.P. Morgan. Defendant relayed Vista's offer and discussed the status of ongoing discussions with
27 other strategic parties. At this meeting J.P. Morgan also presented further details of Vista's indication
28 of interest. The Board concluded that Vista's offer price was attractive, and that due to the lack of

1 interest from other parties to date, it was unlikely for there to be an offer from another party with a
2 better price. Regardless, the Board instructed J.P. Morgan to negotiate for a higher price using the three
3 sets of financial projections Company management had provided to J.P. Morgan (FY2018 Original
4 Base Case, the Updated Case, and the Lower Growth Case).

5 63. At this same meeting, the Board also discussed that guidance would likely be lowered
6 due to calculated billings at the end of the first quarter of the Company's fiscal 2018, which also might
7 cause a material decline in the Company's stock price. The Board also determined that it would be
8 futile to engage in further outreach to strategic parties and financial partners given the timeline in
9 Vista's indication of interest. With this in mind, the Board instructed J.P. Morgan to only reach out to
10 Party B and Party I to inquire whether they were interested in acquiring Xactly, and no other parties.
11 In addition, the Board instructed management to create another set of projections, the Updated
12 Acquisitions Case (which would include higher revenue growth based on an assumed acquisition of an
13 adjacent business in second quarter of the Company's fiscal 2018).

14 64. After the meeting on May 24, the Board convened an independent executive session
15 with Outside Counsel and discussed the importance of management remaining objective throughout
16 the strategic process. With this in mind, the Board agreed to reiterate to management that they refrain
17 from any discussions relating to reinvestment in Xactly or continued employment prior to the signing
18 of any potential transaction. The Board did so following this meeting.

19 65. On May 24, 2017, Defendant Cabrera reached out to Party B to connect them with
20 J.P. Morgan. J.P. Morgan and Party B discussed coordinating a follow-up due diligence phone call
21 with the Company. In addition, on this day, J.P. Morgan, at the Board's direction, contacted Party B
22 and Party I to inform them that if they had interest in acquiring the Company, they should express such
23 no later than May 28, 2017.

24 66. From May 24, 2017 through May 26, 2017, J.P. Morgan and Vista continued due
25 diligence and negotiations. As directed by Company management, J.P. Morgan relayed the Board's
26 desire that Vista increase its offer price. On May 26, 2017, Vista reiterated that its offer was contingent
27 on signing a transaction by the evening of May 29, 2017.

28

1 67. On May 26, 2017, the Board held a special meeting with Company management,
2 Outside Counsel, and J.P. Morgan where Defendant Cabrera presented an update on the Vista offer and
3 the status of communications with Party B and Party I. The Board discussed the offer, Vista's recent
4 transaction history, and the level of interest expressed to date from Party B and Party I. In addition,
5 Outside Counsel recommended seeking a "go shop" provision, and informed the Board that the draft
6 merger agreement contained a customary "fiduciary out" provision.

7 68. After the special meeting on May 26, 2017, the Board held an independent executive
8 session where the independent directors determined that the offer from Vista was attractive and in the
9 best interests of Company stockholders. They also concluded that the Company should continue to
10 attempt to increase the share price offered by Vista.

11 69. On May 26, 2017, Defendant Cabrera and Consul held a follow-up call with Party B and
12 updated financial results for the Company were presented.

13 70. Later in the day on May 26, 2017, J.P. Morgan was informed by Party I that it would
14 not be submitting an offer for the Company.

15 71. In the evening of May 26, 2017, Outside Counsel sent a markup of the merger agreement
16 back to Vista's legal counsel. Throughout May 27 and May 28, 2017, Outside Counsel, J.P. Morgan,
17 and Vista's legal counsel continued to negotiate the draft merger agreement.

18 72. On May 28, 2017, following further check-ins by J.P. Morgan and Party B, Party B
19 indicated they had no interest in the Company at that time and that it would not be submitting an offer.

20 73. On May 28, 2017, by late afternoon, Vista reached out to J.P. Morgan and increased its
21 offer price to \$15.50 per share on the condition that there would be no "go-shop" provision included in
22 the merger agreement.

23 74. In the evening of May 28, 2017, the Board held a special meeting with Company
24 management, Outside Counsel, and J.P. Morgan. At this meeting Defendant Cabrera informed the
25 Board that none of Company management had engaged in discussions regarding continued employment
26 to date. J.P. Morgan also informed the Board that Party B and Party I would not be submitting an offer,
27 that Vista rejected a "go-shop" provision and of its belief that Vista would not increase its offer much
28 further. The Board determined that they would be willing to forego a "go-shop" provision for an

1 increased offer price and informed J.P. Morgan to negotiate further. Vista thereafter, increased then
2 communicated their best and final offer price of \$15.65. That evening the Board held a special meeting
3 and unanimously concluded to approve the merger agreement with Vista, after which the Company and
4 Parent executed and agreed to the Merger Agreement.

5 75. On the morning of May 30, 2017, Xactly and Vista issued a joint press release on the
6 matter, which stated the following relevant information:

7 “SAN JOSE, Calif.--(BUSINESS WIRE)-- Xactly (NYSE: XTLY), a leading
8 provider of cloud-based incentive solutions, today announced that it has entered into
9 a definitive agreement to be acquired by Vista Equity Partners (“Vista”), a leading
private equity firm focused on investments in software, data and technology-enabled
businesses.

10 Under the terms of the agreement, affiliates of Vista will acquire all outstanding
11 shares of Xactly common stock for a total value of approximately \$564
12 million. Xactly stockholders will receive \$15.65 in cash per share, representing an
13 approximately 17% premium to the closing price as of May 26, 2017 and an
approximately 31% premium compared to the 3-month volume weighted average
price of Xactly’s common stock.

14 “This announcement represents a very positive event for our stockholders and
15 enables Xactly to build upon its successful 12-year history,” said Christopher W.
16 Cabrera, founder and CEO of Xactly Corporation. “We are confident that Vista is the
ideal partner to accelerate our growth initiatives and enable Xactly to focus on
innovation and customer success while forging a new era of incentive compensation
management.”

17 “Xactly’s market leadership in cloud incentive compensation solutions makes it an
18 ideal addition to the Vista family of companies,” said Brian Sheth, Co-Founder and
19 President of Vista Equity Partners. “We are looking forward to bringing Vista’s
resources and expertise to help drive Xactly’s next phase of innovation and growth.”

20 Xactly’s headquarters will remain in San Jose. The closing of the transaction is
21 subject to customary closing conditions, including the approval of Xactly’s
stockholders and antitrust approval in the United States. The transaction is expected
to close in the third quarter of the 2017 calendar year.

22 In a separate press release issued today, Xactly announced preliminary financial
23 results for the first quarter of 2018. Xactly will report its fiscal 2018 first quarter in
24 its Quarterly Report on Form 10-Q. Xactly will not hold a conference call to discuss
earnings due to the announced sale of the company.

25 J.P. Morgan Securities LLC is acting as exclusive financial advisor and Wilson,
26 Sonsini, Goodrich & Rosati, Professional Corporation, is serving as legal advisor
27 to Xactly. Vista’s legal advisor is Kirkland & Ellis LLP.”
28

1 ***The Proxy Misleads Xactly Stockholders by Omitting Material Information***

2 76. On June 16, 2017, Xactly filed a materially misleading and incomplete Proxy with the
3 SEC which was designed to convince stockholders to vote in favor of the Proposed Transaction, the
4 Proxy is rendered misleading by the omission of critical information concerning the process that led up
5 to the execution of the Merger Agreement, including the projected financial information provided to
6 J.P. Morgan by Xactly management to support the rendering of its fairness opinion, the existence of
7 standstill provisions, and information regarding potential conflicts of interest faced by Xactly senior
8 management when leading the search for strategic alternatives that ultimately resulted in execution of
9 the Merger Agreement.

10 ***Potential Conflicts of Interest***

11 77. The Proxy contains material misrepresentations and omissions regarding employment
12 negotiations taking place in the lead up to the Merger Agreement.

13 78. The Proxy states that on May 28, 2017, Defendant Cabrera informed the Board that none
14 of Company management had engaged in discussions with Vista regarding continued employment.
15 However, the Proxy also stated that, “[c]ertain of [Xactly’s] executive officers have had and may
16 continue to have discussions, or may enter into agreements with, Parent or Merger Sub or their
17 respective affiliates regarding employment with, or the right to purchase or participate in the equity of,
18 the Surviving Corporation or one or more of its affiliates.” These two statements are at best misleading,
19 as there is no information as to the content, nature, timing nor parties involved in discussions these
20 particular Company executives “have had.” Moreover, given that Vista is a private equity buyer, rather
21 than a strategic purchaser, the likelihood is very high that Vista pursued communications concerning
22 its intention to retain management, as such buyers typically do in such transactions.

23 79. The Proxy materially misleads Xactly stockholders when it omits material facts
24 concerning communications between Vista and the Board or any Xactly senior management regarding
25 post-transaction retention of Xactly’s management and/or directors. The fact that the Proxy states that
26 executive officers have had conversations on this topic but contains no information about said
27 conversations is materially misleading. Moreover, the Merger Agreement explicitly states that at
28 closing, the “Surviving Corporation or one of its Subsidiaries” would continue to employ Xactly’s

1 employees for a period of one year. Such discussions must have occurred while the Proposed
2 Transaction was being negotiated, but are not disclosed in the Proxy.

3 80. The failure to disclose the content and timing of such discussions materially misleads
4 Xactly stockholders as to the appropriateness of the Board's decision to not conduct any kind of further
5 market check with respect to the merger price, and the potential conflicts of interest faced by Company
6 management and the Board in supporting the merger.

7 81. The omitted information relating to the timing, content, and parties involved in these
8 communications concerning the retention of Xactly's management and directors would significantly
9 alter the total mix of information that Defendants have disclosed to solicit stockholder approval of the
10 Proposed Transaction. The conflicts of interests created and fostered by such communications would
11 affect the stockholders' perception and analysis of the entire process and the ultimate fairness of the
12 Proposed Transaction. Thus the statements in the Proxy, including the statements indicating that
13 executives have had negotiations on continued employment with no further information, are rendered
14 materially misleading by these omissions.

15 82. The Proxy fails to disclose the amount of compensation J.P. Morgan received for acting
16 as joint lead bookrunner on Xactly's IPO in June 2015. Full disclosure of investment banker
17 compensation is required due to the central role played by J.P. Morgan in the evaluation, exploration,
18 selection, and implementation of strategic alternatives here.

19 83. The omission of this information renders the statements made in the following sections
20 of the Proxy false and misleading: (i) "Background of the Merger"; (ii) "Recommendation of the Board
21 of Directors and Reasons for the Merger"; and (iii) "Fairness Opinion of J.P. Morgan Securities LLC."

22 ***Misleading Statements and Omissions Regarding the Company's Financial Projections***

23 84. The Proxy fails to disclose material information concerning the Company's financial
24 projections relied upon by J.P. Morgan in preparing its fairness opinion.

25 85. The Proxy discloses two non-GAAP accounting metrics for projected financial
26 information over the years 2017-2030: Adjusted EBITDA and Unlevered Free Cash Flow. However,
27 providing these non-GAAP metrics without disclosing all line item metrics used to calculate them, or
28 otherwise reconciling the non-GAAP projections to GAAP measures, makes the provided disclosures

1 materially incomplete and misleading. Non-GAAP measures have no universally understood definition
2 and vary widely between companies depending on the needs of management in promoting their own
3 effect on Company performance.

4 86. The Proxy fails to disclose interest expense for Company projections for years 2021E
5 to 2030E which prevents the calculation of net income for such years. Further, the projections fail to
6 otherwise disclose projected net income for years 2021E to 2030E. Without these measures, cherry-
7 picking the disclosed projections materially misleads Xactly stockholders and renders J.P. Morgan's
8 financial analysis materially incomplete and misleading.

9 87. Because of the non-standardized and potentially manipulative nature of non-GAAP
10 measures, when a company discloses information in a proxy that includes non-GAAP financial
11 measures, the company must also disclose comparable GAAP measures and a quantitative
12 reconciliation of forward-looking information pursuant to Regulation G. 17 C.F.R. § 244.100.

13 88. Indeed, the SEC has repeatedly emphasized that disclosure of non-GAAP projections
14 can be inherently misleading, and has therefore heightened its scrutiny of the use of such projections.¹
15 In fact, on May 17, 2016, the SEC's Division of Corporation Finance released new and updated
16 Compliance and Disclosure Interpretations ("C&DIs") on the use of non-GAAP financial metrics that
17 demonstrate the SEC is indeed tightening policy.² One of the new C&DIs regarding forward-looking
18 information, such as financial projections, explicitly requires companies to provide *any* reconciling
19 metrics that are available without unreasonable efforts.

20 89. Thus, the above-referenced line-item projections that have been omitted from the Proxy
21 are precisely the types of "reconciling metrics" that the SEC has recently indicated should be disclosed
22 to render non-GAAP financial projections not misleading to stockholders.

23
24
25 ¹ See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's*
26 *Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation (June
27 24, 2016), <https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/>; Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. TIMES, Apr. 22, 2016, http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0.

28 ² *Non-GAAP Financial Measures, Compliance & Disclosure Interpretations*, SEC (May 17, 2016), <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>.

1 90. Defendants' failure to provide Xactly's stockholders with the foregoing material
2 information renders the financial projections and analyses depicted in the Proxy materially incomplete
3 and misleading, and constitutes a violation of Sections 14(a) and 20(a) of the Exchange Act, and Rule
4 14a-9 promulgated thereunder. The Individual Defendants were aware of their duty to disclose this
5 information, and yet omitted such at least recklessly or negligently. The material information described
6 above that was omitted from the Proxy takes on actual significance in the minds of Xactly's
7 stockholders in reaching their decision whether to vote in favor of the Proposed Transaction. Absent
8 disclosure of this material information prior to the vote on the Proposed Transaction, Plaintiff and the
9 other members of the Class will be unable to make an informed decision about whether to vote in favor
10 of the Proposed Transaction and are thus threatened with irreparable harm for which damages are not
11 an adequate remedy.

12 91. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the
13 irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

14 ***Existence of Standstill Provisions***

15 92. The Proxy discloses that the Company entered into a number of confidentiality
16 agreements with potential merger partners during its search for strategic partners. For example, the
17 Proxy states that Xactly negotiated and entered into a confidentiality agreement with Party I, but does
18 not disclose any of the terms of this agreement. Further, the Merger Agreement contains a provision
19 which states that Vista executed a confidentiality agreement dated April 28, 2017. However, the Proxy
20 is silent as to whether any of these confidentiality agreements contained standstill provisions, and if
21 they did, whether the standstill provisions contained don't-as-don't-waive provisions or other terms
22 that would have contractually forbidden the counterparties during the lead up to the signing of the
23 Merger Agreement from coming forward with a superior offer, or "topping bid," to the Proposed
24 Transaction.

25 93. The omission of this information materially misleads Xactly stockholders as to whether
26 counterparties have been inappropriately restricted since the announcement of the Proposed
27 Transaction from coming forward with a higher bid.

28

CLAIMS FOR RELIEF

COUNT I

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

94. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

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

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

97. The Individual Defendants were at least reckless or negligent in filing the Proxy with these materially misleading statements and omissions.

98. The omissions and misstatements in the Proxy are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy and in other information reasonably available to stockholders.

99. The Proxy is an essential link in causing Plaintiff and the Company's stockholders to approve the Proposed Transaction.

100. By reason of the foregoing, Defendants violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder.

101. Because of the false and misleading statements in the Proxy, plaintiff and the Class are threatened with irreparable harm.

COUNT II

Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants

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

1 103. The Individual Defendants acted as controlling persons of Xactly within the meaning of
 2 Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or
 3 directors of Xactly and participation in and/or awareness of the Company's operations and/or intimate
 4 knowledge of the false statements contained in the Proxy, they had the power to influence and control
 5 and did influence and control, directly or indirectly, the decision making of the Company, including
 6 the content and dissemination of the various statements that Plaintiff contends are false and misleading.

7 104. Each of the Individual Defendants was provided with or had unlimited access to copies
 8 of the Proxy alleged by Plaintiff to be misleading prior to and/or shortly after these statements were
 9 issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

10 105. In particular, each of the Individual Defendants had direct and supervisory involvement
 11 in the day-to-day operations of the Company, and therefore, is presumed to have had the power to
 12 control and influence the particular transactions giving rise to the violations as alleged herein, and
 13 exercised the same. The Proxy contains the unanimous recommendation of the Individual Defendants
 14 to approve the Proposed Transaction. They were thus directly involved in the making of the Proxy.

15 106. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the
 16 Exchange Act.

17 107. As set forth above, the Individual Defendants had the ability to exercise control over
 18 and did control a person or persons who have each violated Section 14(a) of the Exchange Act and Rule
 19 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons,
 20 these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate
 21 result of Defendants' conduct, Plaintiff and the Class are threatened with irreparable harm.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff prays for judgment and relief as follows:

24 A. Declaring that this action is properly maintainable as a class action and certifying
 25 Plaintiff as the Class representative and his counsel as Class counsel;

26 B. Preliminarily and permanently enjoining Defendants and all persons acting in concert
 27 with them from proceeding with, consummating, or closing the Proposed Transaction;

28 C. In the event Defendants consummate the Proposed Transaction, rescinding it and setting

1 it aside or awarding rescissory damages;

2 D. Directing the Individual Defendants to disseminate a Proxy that does not contain any
3 untrue statements of material fact and that states all material facts required in it or necessary to make
4 the statements contained therein not misleading;

5 E. Declaring that Defendants violated Sections 14(a) and/or 20(a) of the Exchange Act, as
6 well as Rule 14a-9 promulgated thereunder;

7 F. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's
8 attorneys' and experts' fees; and

9 G. Granting such other and further relief as this Court may deem just and proper.

10 **JURY DEMAND**

11 Plaintiff respectfully requests a trial by jury on all issues so triable.

12
13 Dated: July 6, 2017

LEVI & KORSINSKY LLP

14 By: /s/ Rosemary M. Rivas
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17 San Francisco, CA 94104
18 Telephone: (415) 291-2420
19 Facsimile: (415) 484-1294

20 Donald J. Enright (to be admitted *pro hac vice*)
21 Elizabeth K. Tripodi (to be admitted *pro hac vice*)
22 1101 30th Street NW, Suite 115
23 Washington, D.C. 20007
24 Telephone: (202) 524-4290
25 Facsimile: (202) 333-2121

26 *Counsel for Plaintiff Steven DePalo*
27
28

CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, Steven DePalo , declare as to the claims asserted under the federal securities laws, as follows:

1. I have reviewed the Complaint and authorized its filing.

2. I did not purchase the securities that are the subject of this Complaint at the direction of Plaintiffs' counsel or in order to participate in this litigation.

3. I am willing to serve as a representative party on behalf of the Class, including providing testimony at deposition and trial, if necessary.

4. I currently hold shares of Xactly Corp. My purchase history is as follows:

Purchase Date	Stock Symbol	Shares Transacted	Price Per Share
8/14/2015	XTLY	500	7.5763
9/01/2015	XTLY	500	6.6009

5. During the three years prior to the date of this Certification, I have not participated nor have I sought to participate, as a representative in any class action suit in the United States District Courts under the federal securities laws.

6. I have not received, been promised or offered, and will not accept, any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this class action, except for: (i) such damages or other relief as the Court may award to me as my pro rata share of any recovery or judgment; (ii) such reasonable fees, costs or other payments as the Court expressly approves to be paid to or on behalf of me; or (iii) reimbursement, paid by my attorneys, of actual or reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed this July 5, 2017, at Brooklyn, NY.

Name: Steven DePalo

Signed:



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

STEVEN DEPALO, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Kings County, New York (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

XACTLY CORP., CHRISTOPHER W. CABRERA, GERALD S. CASILLI, NEAL DEMPSEY, LAUREN FLAHERTY, EARL E. FRY, SCOTT MCGREGOR, CAROL MILLS, DAVID W. PIDWELL, JOHN P. WARD

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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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 Hon. Haywood S. Gilliam, Jr. DOCKET NUMBER 4:17-cv-03783-HSG

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

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

DATE 07/06/2017

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.