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

9 PAUL PARSHALL, Individually and On
Behalf of All Others Similarly Situated,

10 Plaintiff,

11 v.

12 NIMBLE STORAGE, INC., SURESH
13 VASUDEVAN, VARUN MEHTA, FRANK
CALDERONI, JAMES J. GOETZ, WILLIAM
14 JENKINS JR., JERRY M. KENNELLY,
WILLIAM J. SCHROEDER, BOB KELLY,
15 HEWLETT PACKARD ENTERPRISE
COMPANY, AND NEBRASKA MERGER
16 SUB, INC.,

17 Defendants.

Case No. 3:17-cv-01538

CLASS ACTION

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

JURY TRIAL DEMANDED

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

21 **SUMMARY OF THE ACTION**

22 1. This action stems from a proposed transaction announced on March 7, 2017 (the
23 “Proposed Transaction”), pursuant to which Nimble Storage, Inc. (“Nimble Storage” or the
24 “Company”) will be acquired by Hewlett Packard Enterprise Company (“Parent”), and Nebraska
25 Merger Sub, Inc. (“Merger Sub,” and together with Parent, “Hewlett Packard”).

26 2. On March 6, 2017, Nimble Storage’s Board of Directors (the “Board” or
27

1 “Individual Defendants”) caused the Company to enter into an agreement and plan of merger
2 (the “Merger Agreement”) with Hewlett Packard. Pursuant to the terms of the Merger
3 Agreement, shareholders of Nimble Storage will receive \$12.50 in cash for each share of Nimble
4 Storage common stock.

5 3. On March 17, 2017, defendants filed a Solicitation/Recommendation Statement
6 (the “Solicitation Statement”) with the United States Securities and Exchange Commission
7 (“SEC”) in connection with the Proposed Transaction.

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

1 protect their interests.

2 27. Defendants have acted, or refused to act, on grounds generally applicable to the
3 Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on
4 behalf of the Class is appropriate.

5 **SUBSTANTIVE ALLEGATIONS**

6 ***Background of the Company and the Proposed Transaction***

7 28. Nimble Storage's enduring mission is to engineer and deliver the industry's most
8 efficient flash storage platform. Its Predictive Flash platform is comprised of a Unified Flash
9 Fabric that provides a single consolidation architecture with common data services across a
10 portfolio of All Flash and Adaptive Flash arrays and InfoSight predictive analytics with
11 integrated support and service offerings. It enables IT organizations to optimize performance,
12 capacity and cost for all applications running across the data center and maintain a 99.9997%
13 measured uptime with InfoSight cloud-based management software.

14 29. Six components form the foundation of the Predictive Flash platform and the
15 value it provides to IT organizations:

- 16 • Its AF-Series All Flash arrays, announced in February 2016, combine the
17 high performance of flash with InfoSight's predictive analytics to deliver
18 the performance, scalability and availability required to optimize high-
19 performance applications with deterministic latency requirements.
- 20 • Its CS-Series Adaptive Flash arrays combine a flash-optimized hybrid
21 architecture with InfoSight's predictive analytics to deliver the
22 performance, scale and availability required for mainstream applications
23 and mixed workloads that are sensitive to cost of capacity or do not
24 require the deterministic performance of all flash.
- 25 • Its Unified Flash Fabric enables IT organizations to deploy and manage
26 AF-Series All Flash arrays and CS-Series Adaptive Flash arrays together
27 as a single entity with common data services that enable transparent data
28 and application mobility at a lower cost of capacity than all flash arrays
alone. In addition, the AF-Series All Flash arrays, with advanced data
reduction capabilities, provide inline variable block deduplication and
variable block compression that can achieve five-to-one reduction for

1 certain workloads to increase the useable effective capacity of individual
2 arrays and scale-out clusters.

- 3 • InfoSight cloud-based predictive analytics enable IT organizations to
4 prevent issues and avoid downtime, conduct rapid root cause analysis
5 across all layers of IT infrastructure and accurately predict future needs,
6 providing planning best practices based on big data and predictive
7 analytics gleaned from across the entire end-customer installed base.
- 8 • SmartStack is a range of integrated infrastructure solutions jointly
9 developed by Nimble Storage and Cisco that combine our arrays with the
10 Cisco Unified Computing System. SmartStack solutions span pre-
11 validated, pre-tested Cisco Validated Designs, or CVDs, and reference
12 architectures across a range of enterprise applications and workloads. The
13 solutions enable IT organizations to accelerate application deployments
14 and time to value, scale compute networking and storage performance
15 independently to adapt to changing business needs and reduce the
16 complexity and risk associated with managing data center infrastructure.
- 17 • Its Timeless Storage offering represents an unwavering commitment to the
18 complete satisfaction of our end-customers. Our All Flash and Adaptive
19 Flash arrays ship with all-inclusive software and flat support pricing for
20 the life of the product. In addition, for All Flash arrays introduced in
21 February 2016, our end-customers that opt to renew three-year support
22 contracts have an option to receive a free controller upgrade that is
23 guaranteed to be faster.

24 30. Collectively, the Company believes that its Predictive Flash platform delivers
25 absolute performance that scales, non-stop availability and cloud-like agility. This unique
26 combination of predictive analytics and flash storage enables IT organizations to deliver data
27 velocity. The Company believes immediate access to data improves user productivity and
28 accelerates business processes, increasing business value.

31 31. On November 22, 2016, Nimble Storage issued a press release wherein it reported
32 its third quarter 2017 results.

33 32. Among other things, the Company reported total revenue increased 26% to
34 \$102.0 million for the third quarter of fiscal 2017, up from \$80.7 million in the third quarter of
35 fiscal 2016.

1 33. In addition, the Company reported the following business highlights:

- 2 • **Partnership with Lenovo to Transform the Data Center.** This strategic
3 partnership encompasses Lenovo flash-based storage and converged
4 infrastructure solutions powered by Nimble. Lenovo and Nimble will
5 enable the transformation of data center capabilities by delivering new
6 levels of efficiency and scale, and slashing the time IT teams spend
7 managing infrastructure.
- 8 • **Named a Leader in the 2016 Gartner Magic Quadrant for General-
9 Purpose Disk Arrays.** Nimble has been positioned furthest on the
10 visionary axis in the Leaders quadrant. The report analyzes hybrid and
11 solid-state arrays that support storage area network and network-attached
12 storage protocols. This is the second consecutive year Nimble has been
13 placed in the Leaders quadrant of the Gartner Magic Quadrant for
14 General-Purpose Disk Arrays.
- 15 • **Released Aggressive Entry Point to All Flash Storage.** The new Nimble
16 AF1000 offers a full-featured all flash array with superior scalability,
17 allowing customers to start small and scale non-disruptively up to 8PB at a
18 substantially lower cost.
- 19 • **Introduced a New Generation of Adaptive Flash Arrays.** The new
20 portfolio consists of the CS1000, CS3000, CS5000 and CS7000,
21 delivering up to 2X performance improvement and 40% lower cost of
22 capacity compared to the previous generation of CS-Series Adaptive Flash
23 arrays.
- 24 • **Nimble Storage Predictive Flash Becomes App-Centric.** Nimble
25 introduced a comprehensive suite of features that are optimized around
26 fast and predictable application delivery, including Quality of Service and
27 secure multi-tenancy. Nimble now also offers app-based pricing for
28 Storage on Demand, providing a cloud-like pricing model where
enterprises only pay for the storage consumed by each application.
Additionally, Nimble now supports native persistent storage for Docker
Containers, adding to the app-level granularity Nimble provides through
VMware VVols and native support for OpenStack Clouds.
- **Enabling Cloud Service Providers to Enhance Offerings.** Nimble
announced a new Cloud Service Provider program, enabling cloud
partners to increase competitive advantage by offering comprehensive
premium services. New features for Cloud Service Providers allow them
to offer premium app-centric services to their customers, including Quality
of Service, secure multi-tenancy, and app-based Storage on Demand
pricing.
- **Investment in Channel Ecosystem with SiteAnalyzer.** Cloud-based
SiteAnalyzer expands InfoSight Predictive Analytics by delivering deep

1 visibility into non-Nimble end user environments, eliminating guesswork
2 that can shorten the sales cycle.

- 3 • **OpenStack 8.0 Certification Completed.** Nimble Predictive All Flash
4 and Adaptive Flash arrays have been certified with Red Hat OpenStack
5 Platform 8, ensuring that Nimble products and services are fully tested,
6 supported, and certified to perform with Red Hat technologies.
- 7 • **Mark Stevens Named Vice President of EMEA.** Stevens brings nearly
8 35 years of technical, sales and leadership experience to Nimble. He will
9 draw from his extensive background in the enterprise storage space to
10 accelerate enterprise and channel strategy across EMEA.
- 11 • **Nimble Storage Recognized for Exceptional Growth and Innovation.**
 - 12 • 2016 CRN Tech Innovator award presented to Nimble for the
13 AF1000 All Flash array. This new entry-level all flash array from
14 Nimble was recognized for being the most innovative storage
15 product in the channel.
 - 16 • Deloitte's 2016 Technology Fast 500 ranked Nimble 63 on its list
17 for fastest growing companies in North America.
 - 18 • Computerworld Malaysia awarded Nimble the 2016 Readers
19 Choice Award. A combination of price, performance, features,
20 reliability and ease of use lead Nimble to earning the award for
21 networked storage.

22
23 34. With respect to the strong results, Individual Defendant Vasudevan, CEO of the
24 Company, commented:

25 We executed well in Q3FY17, with strong momentum driven by All Flash arrays
26 and growth in strategic customer segments. Our annualized AFA bookings run-
27 rate is approximately \$100M in just our second full quarter of shipping
28 AFAs. Bookings from Large Enterprises grew 53% and Cloud Service Providers
grew 65% over Q3FY16[.] . . . The differentiation of our Predictive Flash
platform is driving market-share gains and strong win-rates. A single architecture
across All Flash and Adaptive Flash arrays is designed to accelerate every
enterprise application. Our cloud-based predictive analytics delivers unmatched
reliability and radically simplifies operations for customers.

35. The Board caused the Company to enter into the Merger Agreement, pursuant to
which Nimble Storage will be acquired for inadequate consideration.

36. The Individual Defendants have all but ensured that another entity will not
emerge with a competing proposal by agreeing to a "no solicitation" provision in the Merger

1 Agreement that prohibits the Individual Defendants from soliciting alternative proposals and
2 severely constrains their ability to communicate and negotiate with potential buyers who wish to
3 submit or have submitted unsolicited alternative proposals. Section 6.02(a) of the Merger
4 Agreement states:

5 (a) No Solicitation. Until the earlier of the Effective Time and the valid
6 termination of this Agreement pursuant to Section 9.01, the Company shall not,
7 and shall cause its Subsidiaries and the officers and directors of the Company and
8 its Subsidiaries not to, and shall use reasonable best efforts to cause its other
9 Representatives not to, directly or indirectly, (i) solicit, initiate, endorse,
10 knowingly facilitate or knowingly encourage the submission or announcement of
11 any inquiries, proposals or offers that constitute or would reasonably be expected
12 to lead to any Takeover Proposal, (ii) provide any nonpublic information
13 concerning the Company or any of its Subsidiaries to any person or group in
14 connection with any Takeover Proposal or any inquiry, proposal or offer that
15 would reasonably be expected to lead to any Takeover Proposal, or engage in any
16 discussions or negotiations with respect to any Takeover Proposal (other than
17 solely to inform any relevant third party of the restrictions in this Section 6.02),
18 (iii) approve, support, adopt, endorse or recommend any Takeover Proposal,
19 (iv) take any action to make the provisions of any Takeover Law inapplicable to
20 any person other than Parent and its Affiliates or to any transactions constituting
21 or contemplated by a Takeover Proposal, (v) otherwise cooperate with or assist or
22 participate in, or knowingly facilitate, any such inquiries, proposals, offers,
23 discussions or negotiations, or (vi) resolve or agree to do any of the foregoing.
24 Subject to Section 6.02(b), the Company shall, and shall cause its Subsidiaries
25 and its and their respective officers and directors to, and shall use reasonable best
26 efforts to cause its and their respective other Representatives to, immediately
27 cease and cause to be terminated any solicitation, encouragement, discussion or
28 negotiation with any person or groups that may be ongoing with respect to any
Takeover Proposal or potential Takeover Proposal. The Company shall promptly
after the date hereof instruct each person (if any) that has heretofore executed a
confidentiality agreement (other than the Confidentiality Agreement) relating to a
Takeover Proposal or potential Takeover Proposal with or for the benefit of the
Company promptly to return to the Company or destroy all information,
documents, and materials relating to the Takeover Proposal or to the Company or
its businesses, operations or affairs heretofore furnished by the Company, any of
its Subsidiaries or any of their respective Representatives to such person or any of
its Representatives in accordance with the terms of such confidentiality
agreement, and shall enforce (including by seeking an injunction) the contractual
rights of the Company or any of its Subsidiaries under any such agreement with
respect thereto, and shall enforce, and not waive, terminate or modify without
Parent's prior written consent, any standstill or similar provision in any
confidentiality, standstill or other agreement with such person; provided that the
Company may waive any standstill or similar provisions to the extent necessary to
permit a person to make, on a confidential basis to the Company Board, a
Takeover Proposal, conditioned upon such person agreeing to disclosure of such
Takeover Proposal to Parent and Merger Sub, in each case as contemplated by
this Section 6.02 (provided, further that the Company may only take such action if

1 the Company Board determines in good faith (after consultation with its outside
2 legal counsel) that the failure of the Company Board to take such action would
3 reasonably be expected to be inconsistent with the Company Board's fiduciary
4 duties under applicable Law). The Company shall not, and shall not permit any of
5 its Subsidiaries or its or their respective Representatives to, enter into any
6 confidentiality agreement subsequent to the date hereof which prohibits the
7 Company from providing to Parent the information required to be provided to
8 Parent pursuant to this Section 6.02.

9 37. Further, the Company must promptly advise Hewlett Packard of any proposals or
10 inquiries received from other parties. Section 6.02(c) of the Merger Agreement states:

11 (c) Notice to Parent of Takeover Proposals. The Company shall promptly (and, in
12 any event, within one (1) Business Day) notify Parent orally and in writing in the
13 event that the Company, any of its Subsidiaries or any of their respective
14 Representatives receives any Takeover Proposal, or any initial request for
15 nonpublic information concerning the Company or any of its Subsidiaries related
16 to, or from any person or group in connection with, any Takeover Proposal or any
17 inquiry, proposal or offer that would reasonably be expected to lead to any
18 Takeover Proposal, or any initial request for discussions or negotiations related to
19 any Takeover Proposal (and any material changes related to any of the foregoing),
20 and in connection with such notice, provide the identity of the person or group
21 making such Takeover Proposal or request and the material terms and conditions
22 thereof (including, if available, copies of any written requests, proposals or offers,
23 including proposed agreements, and written summaries of the material terms of
24 any oral requests, proposals or offers) and the nature of such request, and
25 thereafter the Company shall keep Parent reasonably informed on a reasonably
26 timely basis of the status and material details of discussions with respect thereto,
27 including any material changes to the terms thereof. Without limiting any of the
28 foregoing, the Company shall promptly (and in any event within one (1) Business
Day) notify Parent in writing if it determines to begin providing information or to
begin engaging in discussions or negotiations concerning a Takeover Proposal
pursuant to Section 6.02(b) and shall in no event begin providing such
information or begin engaging in such discussions or negotiations prior to
providing such notice. The Company shall provide Parent with at least one
(1) Business Day's prior notice (or such shorter notice as may be provided to the
Company Board) of each meeting of the Company Board at which the Company
Board is reasonably expected to consider any Takeover Proposal.

38. Moreover, the Merger Agreement contains a highly restrictive "fiduciary out"
provision permitting the Board to withdraw its approval of the Proposed Transaction under
extremely limited circumstances, and grants Hewlett Packard a "matching right" with respect to
any "Superior Proposal" made to the Company. Section 6.02(e) of the Merger Agreement
provides, in relevant part:

1 (e) Change of Recommendation. Notwithstanding Section 6.02(d), at any time
2 prior to the Acceptance Time, the Company Board may, subject to compliance in
3 all material respects with the other provisions of this Section 6.02, (x) terminate
4 this Agreement pursuant to Section 9.01(f) in order to enter into an Acquisition
5 Agreement providing for a Superior Proposal, or (y) effect an Adverse
6 Recommendation Change in response to an Intervening Event; provided that
7 (1) the Company Board determines in good faith (after consultation with its
8 outside legal counsel) that the failure to take such action would reasonably be
9 expected to be inconsistent with its fiduciary duties under applicable Law, (2) in
10 the case of Section 6.02(e)(x), the Company Board determines in good faith (after
11 consultation with its outside legal counsel and financial advisors) that the
12 applicable Takeover Proposal constitutes a Superior Proposal and the Company
13 terminates this Agreement pursuant to Section 9.01(f), (3) the Company has
14 provided prior written notice to Parent and Merger Sub, at least four (4) Business
15 Days in advance, that it will take the applicable action referred to in Section
16 6.02(e)(x) or (y) and specifying in reasonable detail the reasons therefor (a
17 “Notice of Intended Recommendation Change”) (which notice shall not itself
18 constitute an Adverse Recommendation Change), and (4) the Company has
19 complied in all material respects with the following additional covenants:

20 (i) if such action is being taken pursuant to Section 6.02(e)(x), and if requested by
21 Parent, after providing any such Notice of Intended Recommendation Change, the
22 Company shall, and shall instruct its Representatives to, negotiate with Parent and
23 Merger Sub in good faith during any such four (4) Business Day period (it being
24 understood and agreed that any material amendment to the terms of any such
25 Superior Proposal (and in any event including any amendment to any price term
26 thereof) shall require a new Notice of Intended Recommendation Change and
27 compliance with the other requirements of this Section 6.02(e) anew except that
28 references herein to a four (4) Business Day period shall be deemed to be
references to a two (2) Business Day period) regarding any written and binding
proposal by Parent to amend the terms and conditions of this Agreement and the
other agreements contemplated hereby and at the end of such four (4) Business
Day period (or two (2) Business Day period in the case of a material amendment)
the Company Board again makes the determinations described in clauses (1) and
(2) of this Section 6.02(e) with respect to such Superior Proposal; and

(ii) if such Adverse Recommendation Change is being made pursuant to Section
6.02(e)(y):

(1) such Adverse Recommendation Change is being made as a result of an
event, fact, development or occurrence that materially affects the business, assets
or operations of the Company and that was not known or reasonably foreseeable
by the Company Board as of the date hereof and becomes known to the Company
Board after the date hereof and prior to the Acceptance Time (each, an
“Intervening Event”); provided that in no event shall any of the following
constitute or be deemed to be an Intervening Event: (I) any event, fact,
development or circumstance resulting from any breach of this Agreement by the
Company, (II) the receipt, existence or terms of any Takeover Proposal or any
matter relating thereto or any consequences thereof, (III) the fact, in and of itself,
that the Company exceeds any internal or published projections or (IV) changes,

1 in and of themselves, in the price of the Company Common Stock; and

2 (2) during any such four (4) Business Day period, if requested by Parent, the
3 Company shall have engaged in good faith negotiations with Parent regarding any
4 written and binding proposal by Parent to amend the terms and conditions of this
5 Agreement and the other agreements contemplated hereby and at the end of such
6 four (4) Business Day period the Company Board again makes the determinations
7 described in clause (1) of this Section 6.02(e) with respect to such Intervening
8 Event.

9 39. Further locking up control of the Company in favor of Hewlett Packard, the
10 Merger Agreement provides for a “termination fee” of \$40,800,000, payable by the Company to
11 Hewlett Packard if the Individual Defendants cause the Company to terminate the Merger
12 Agreement.

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

16 41. In connection with the execution of the Merger Agreement, certain stockholders
17 of Nimble Storage have entered into a Tender and Support Agreement, dated March 6, 2017,
18 with Hewlett Packard and Merger Sub (the “Support Agreement”). Subject to the terms and
19 conditions of the Support Agreement, the stockholders have agreed, among other things, to
20 tender their Shares (representing in the aggregate approximately 21% of the total outstanding
21 Shares) into the offer, and, subject to certain exceptions, not to transfer their shares that are
22 subject to the Support Agreement.

23 42. The consideration to be provided to plaintiff and the Class in the Proposed
24 Transaction is inadequate.

25 43. Among other things, the intrinsic value of the Company is materially in excess of
26 the amount offered in the Proposed Transaction.

27 44. Accordingly, the Proposed Transaction will deny Class members their right to
28 share proportionately and equitably in the true value of the Company’s valuable and profitable

1 business, and future growth in profits and earnings.

2 ***The Solicitation Statement Omits Material Information, Rendering It False and Misleading***

3 45. Defendants filed the Solicitation Statement with the SEC in connection with the
4 Proposed Transaction.

5 46. The Solicitation Statement omits material information regarding the Proposed
6 Transaction, which renders the Solicitation Statement false and misleading.

7 47. The Solicitation Statement omits material information regarding the Company's
8 financial projections and the financial analyses performed by the Company's financial advisor,
9 Goldman, Sachs & Co. ("Goldman Sachs"), in support of its so-called fairness opinion.

10 48. For example, with respect to Nimble Storage's financial projections, the
11 Solicitation Statement fails to disclose the Company's projected depreciation and amortization
12 for years 2018 through 2028. Further, the Solicitation Statement fails to provide a reconciliation
13 of all non-GAAP to GAAP financial metrics.

14 49. With respect to Goldman Sachs' Selected Companies Analysis, the Solicitation
15 Statement fails to disclose the individual multiples and financial benchmarking metrics for each
16 of the companies observed by Goldman Sachs in its analysis. Further, to the extent calculated,
17 the Solicitation Statement fails to disclose the implied ranges of values derived from Goldman
18 Sachs' analysis.

19 50. With respect to Goldman Sachs' Selected Transactions Analysis, the Solicitation
20 Statement fails to disclose the individual multiples and financial benchmarking metrics for each
21 of the transactions observed by Goldman Sachs in its analysis.

22 51. With respect to Goldman Sachs' Illustrative Present Value of Future Share Price
23 Analysis, the Solicitation Statement fails to disclose the inputs and assumptions underlying the
24 calculation of the Company's cost of equity, which formed the basis for the discount rate of
25 13.6% used by Goldman Sachs in its analysis. Further, the Solicitation Statement fails to
26

1 disclose the perpetuity growth rates that were implied from Goldman Sachs' analysis.

2 52. With respect to Goldman Sachs' Illustrative Discounted Cash Flow Analysis, the
3 Solicitation Statement fails to disclose the inputs and assumptions underlying the calculation of
4 the Company's cost of capital, which formed the basis for the discount rate range of 12.0% to
5 14.0% used by Goldman Sachs in its analysis. Further, the Solicitation Statement fails to
6 disclose the exit multiples that were implied from Goldman Sachs' analysis.

7 53. The disclosure of projected financial information is material because it provides
8 stockholders with a basis to project the future financial performance of a company, and allows
9 stockholders to better understand the financial analyses performed by the company's financial
10 advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the
11 fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that
12 opinion as well as the key inputs and range of ultimate values generated by those analyses must
13 also be fairly disclosed.

14 54. The omission of this material information renders the Solicitation Statement false
15 and misleading, including, *inter alia*, the following sections of the Solicitation Statement: (i)
16 "Certain Unaudited Prospective Financial Information of Nimble Storage" and (ii) "Opinion of
17 Nimble Storage's Financial Advisor."

18 55. The Solicitation Statement omits material information regarding potential
19 conflicts of interest of the Company's officers and directors, as well as Goldman Sachs.

20 56. Specifically, the Solicitation Statement fails to disclose the timing and nature of
21 all communications, if any, regarding future employment and/or directorship of Nimble
22 Storage's officers and directors, including who participated in all such communications.

23 57. Communications regarding post-transaction employment during the negotiation
24 of the underlying transaction must be disclosed to stockholders. This information is necessary
25 for stockholders to understand potential conflicts of interest of management and the Board, as
26

1 that information provides illumination concerning motivations that would prevent fiduciaries
2 from acting solely in the best interests of the Company's stockholders. The omission of this
3 material information renders the Solicitation Statement false and misleading, including, *inter*
4 *alia*, the "Background of the Merger Agreement" section of the Solicitation Statement.

5 58. Additionally, the Solicitation Statement states that "Goldman Sachs has provided
6 certain financial advisory and/or underwriting services to the Nimble Storage and/or its affiliates
7 from time to time," but it fails to disclose the nature, timing, and compensation earned by
8 Goldman Sachs for those past services.

9 59. The above-referenced omitted information, if disclosed, would significantly alter
10 the total mix of information available to Nimble Storage's stockholders.

11 **COUNT I**

12 **(Claim for Violation of Section 14(e) of the 1934 Act Against Defendants)**

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

14 61. Section 14(e) of the 1934 Act states, in relevant part, that:

15 It shall be unlawful for any person to make any untrue statement of a material fact
16 or omit to state any material fact necessary in order to make the statements made,
17 in the light of the circumstances under which they are made, not misleading . . . in
18 connection with any tender offer or request or invitation for tenders[.]

19 62. Defendants disseminated the misleading Solicitation Statement, which contained
20 statements that, in violation of Section 14(e) of the 1934 Act, in light of the circumstances under
21 which they were made, omitted to state material facts necessary to make the statements therein
22 not misleading.

23 63. The Solicitation Statement was prepared, reviewed, and/or disseminated by
24 defendants.

25 64. The Solicitation Statement misrepresented and/or omitted material facts in
26 connection with the Proposed Transaction as set forth above.

27 65. By virtue of their positions within the Company and/or roles in the process and
28

1 the preparation of the Solicitation Statement, defendants were aware of this information and their
2 duty to disclose this information in the Solicitation Statement.

3 66. The omissions in the Solicitation Statement are material in that a reasonable
4 shareholder will consider them important in deciding whether to tender their shares in connection
5 with the Proposed Transaction. In addition, a reasonable investor will view a full and accurate
6 disclosure as significantly altering the total mix of information made available.

7 67. Defendants knowingly or with deliberate recklessness omitted the material
8 information identified above in the Solicitation Statement, causing statements therein to be
9 materially incomplete and misleading.

10 68. By reason of the foregoing, defendants violated Section 14(e) of the 1934 Act.

11 69. Because of the false and misleading statements in the Solicitation Statement,
12 plaintiff and the Class are threatened with irreparable harm.

13 70. Plaintiff and the Class have no adequate remedy at law.

14 **COUNT II**

15 **(Claim for Violation of 14(d) of the 1934 Act Against Defendants)**

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

17 72. Section 14(d)(4) of the 1934 Act states:

18 Any solicitation or recommendation to the holders of such a security to accept or
19 reject a tender offer or request or invitation for tenders shall be made in
20 accordance with such rules and regulations as the Commission may prescribe as
necessary or appropriate in the public interest or for the protection of investors.

21 73. Rule 14d-9(d) states, in relevant part:

22 Any solicitation or recommendation to holders of a class of securities referred to
23 in section 14(d)(1) of the Act with respect to a tender offer for such securities
24 shall include the name of the person making such solicitation or recommendation
and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-
101) or a fair and adequate summary thereof[.]

25 Item 8 requires that directors must “furnish such additional information, if any, as may be
26 necessary to make the required statements, in light of the circumstances under which they are

1 made, not materially misleading.”

2 74. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it
3 omits the material facts set forth above, which renders the Solicitation Statement false and/or
4 misleading.

5 75. Defendants knowingly or with deliberate recklessness omitted the material
6 information set forth above, causing statements therein to be materially incomplete and
7 misleading.

8 76. The omissions in the Solicitation Statement are material to plaintiff and the Class,
9 and they will be deprived of their entitlement to make a fully informed decision with respect to
10 the Proposed Transaction if such misrepresentations and omissions are not corrected prior to the
11 expiration of the tender offer.

12 77. Plaintiff and the Class have no adequate remedy at law.

13 **COUNT III**

14 **(Claim for Violation of Section 20(a) of the 1934 Act**
15 **Against the Individual Defendants and Hewlett Packard)**

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

17 79. The Individual Defendants and Hewlett Packard acted as controlling persons of
18 Nimble Storage within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue
19 of their positions as officers and/or directors of Nimble Storage and participation in and/or
20 awareness of the Company’s operations and/or intimate knowledge of the false statements
21 contained in the Solicitation Statement filed with the SEC, they had the power to influence and
22 control and did influence and control, directly or indirectly, the decision making of the
23 Company, including the content and dissemination of the various statements that plaintiff
24 contends are false and misleading.

25 80. Each of the Individual Defendants and Hewlett Packard was provided with or had
26 unlimited access to copies of the Solicitation Statement alleged by plaintiff to be misleading

1 prior to and/or shortly after these statements were issued and had the ability to prevent the
2 issuance of the statements or cause them to be corrected.

3 81. In particular, each of the Individual Defendants had direct and supervisory
4 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have
5 had the power to control and influence the particular transactions giving rise to the violations as
6 alleged herein, and exercised the same. The Solicitation Statement contains the unanimous
7 recommendation of the Individual Defendants to approve the Proposed Transaction. They were
8 thus directly connected with and involved in the making of the Solicitation Statement.

9 82. Hewlett Packard also had direct supervisory control over the composition of the
10 Solicitation Statement and the information disclosed therein, as well as the information that was
11 omitted and/or misrepresented in the Solicitation Statement.

12 83. By virtue of the foregoing, the Individual Defendants and Hewlett Packard
13 violated Section 20(a) of the 1934 Act.

14 84. As set forth above, the Individual Defendants and Hewlett Packard had the ability
15 to exercise control over and did control a person or persons who have each violated Section 14(e)
16 of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their
17 positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934
18 Act.

19 85. As a direct and proximate result of defendants' conduct, plaintiff and the Class are
20 threatened with irreparable harm.

21 86. Plaintiff and the Class have no adequate remedy at law.

22 **PRAYER FOR RELIEF**

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

24 A. Enjoining defendants and all persons acting in concert with them from proceeding
25 with, consummating, or closing the Proposed Transaction;
26

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

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

6 D. Declaring that defendants violated Sections 14(e), 14(d), and 20(a) of the 1934
7 Act, as well as Rule 14a-9 promulgated thereunder;

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

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

11
12 **JURY DEMAND**

13 Plaintiff hereby demands a trial by jury.

14 Dated: March 22, 2017

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