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8 [Additional Captions on Signature Page]

9 *Attorney for Plaintiff Alex Victor*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 ALEX VICTOR, Individually and on Behalf)
13 of All Others Similarly Situated,)

14 Plaintiff,)

15 v.)

16 HORTONWORKS, INC., ROBERT)
17 BEARDEN, KEVIN KLAUSMEYER,)
18 MARTIN FINK, JAY ROSSITER,)
19 MICHELANGELO VOLPI, PAUL)
20 CORMIER, and PETER FENTON,)

21 Defendants.)

22 Case No. 3:18-cv-06923

23 **CLASS ACTION COMPLAINT FOR**
24 **VIOLATIONS OF SECTIONS 14(a) AND**
25 **20(a) OF THE SECURITIES**
26 **EXCHANGE ACT OF 1934**

27 **JURY TRIAL DEMANDED**

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

No. 3:18-cv-06923

1 Plaintiff Alex Victor (“Plaintiff”), by his undersigned attorneys, alleges upon personal
2 knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the
3 investigation of counsel as to all other allegations herein, as follows:

4 **NATURE OF THE ACTION**

5 1. This action is brought as a class action by Plaintiff on behalf of himself and the
6 other public holders of the common stock of Hortonworks, Inc. (“Hortonworks” or the
7 “Company”) against the Company and the members of the Company’s board of directors
8 (collectively, the “Board” or “Individual Defendants,” and, together with Hortonworks, the
9 “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of
10 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9,
11 and Regulation G, 17 C.F.R. § 244.100, in connection with the proposed merger (the “Proposed
12 Transaction”) of Hortonworks and Cloudera, Inc. (“Cloudera”).

13 2. On October 3, 2018, the Board caused the Company to enter into an agreement and
14 plan of merger (“Merger Agreement”), pursuant to which Hortonworks’ stockholders will receive
15 1.305 shares of Cloudera common stock in exchange for each share of Hortonworks common stock
16 (the “Merger Consideration”).

17 3. On November 5, 2018, in order to convince Hortonworks shareholders to vote in
18 favor of the Proposed Transaction, the Board authorized the filing of a materially incomplete and
19 misleading Registration Statement on Form S-4 (the “S-4”) with the Securities and Exchange
20 Commission (“SEC”), in violation of Sections 14(a) and 20(a) of the Exchange Act.

21 4. While Defendants are touting the fairness of the Merger Consideration to the
22 Company’s shareholders in the S-4, they have failed to disclose certain material information that
23 is necessary for shareholders to properly assess the fairness of the Proposed Transaction, thereby
24 rendering certain statements in the S-4 false and/or misleading.

25 5. In particular, the S-4 contains materially incomplete and misleading information
26 concerning: (1) the financial projections for the Company, which were developed by the
27

1 Company's management and utilized by the Company's financial advisor, Qatalyst Partners
2 ("Qatalyst") in rendering its fairness opinion, both of which were relied upon by the Board in
3 recommending shareholders vote in favor of the Proposed Transaction; and (2) the sale process
4 leading up to the Proposed Transaction.

5 6. It is imperative that the material information that has been omitted from the S-4 is
6 disclosed to the Company's shareholders prior to the forthcoming shareholder vote, so that they
7 can properly exercise their corporate suffrage rights.

8 7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against
9 Defendants for contraventions of: (i) Rule 14a-9; and (ii) Regulation G, 17 C.F.R. § 244.100, in
10 violation of Sections 14(a) and 20(a) of the Exchange Act. Plaintiff seeks to enjoin Defendants
11 from holding the shareholder vote on the Proposed Transaction and taking any steps to
12 consummate the Proposed Transaction unless, and until, the material information discussed below
13 is disclosed to Hortonworks shareholders sufficiently in advance of the vote on the Proposed
14 Transaction or, in the event the Proposed Transaction is consummated, to recover damages
15 resulting from the Defendants' violations of the Exchange Act.

16 **JURISDICTION AND VENUE**

17 8. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange
18 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges
19 violations of Section 14(a) and 20(a) of the Exchange Act.

20 9. Personal jurisdiction exists over each Defendant either because the Defendant
21 conducts business in or maintains operations in this District, or is an individual who is either
22 present in this District for jurisdictional purposes or has sufficient minimum contacts with this
23 District as to render the exercise of jurisdiction over Defendant by this Court permissible under
24 traditional notions of fair play and substantial justice.

25 10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §
26 78aa, as well as under 28 U.S.C. § 1391, because Hortonworks is headquartered in this District.

PARTIES

11. Plaintiff is, and at all relevant times has been, a Hortonworks shareholder.

12. Defendant Hortonworks is a Delaware corporation and maintains its principal executive offices at 5470 Great America Parkway, Santa Clara, California 95054. Hortonworks' common stock is traded on the NASDAQ GS under the ticker symbol "HDP."

13. Individual Defendant Robert Bearden co-founded the Company, has served as a director of the Company since April 2011, as the Chief Executive Officer since 2012, and Chairman of the Board since 2015.

14. Individual Defendant Kevin Klausmeyer has been a director of the Company since 2014.

15. Individual Defendant Martin Fink has been a director of the Company since 2014.

16. Individual Defendant Jay Rossiter has been a director of the Company since 2011.

17. Individual Defendant Michelangelo Volpi has been a director of the Company since 2011.

18. Individual Defendant Paul Cormier has been a director of the Company since 2011.

19. Individual Defendant Peter Fenton has been a director of the Company since 2011.

20. The Individual Defendants and Hortonworks may collectively be referred to as "Defendants." Each of the Individual Defendants herein is sued individually as well as in his or her capacity as an officer and/or trustee of the Company, and the liability of each arises from the fact that he or she has engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public shareholders of Hortonworks (the "Class"). Excluded from the Class are

1 Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated
2 with any Defendant.

3 22. This action is properly maintainable as a class action because:

4 a. The Class is so numerous that joinder of all members is impracticable. As
5 of November 1, 2018, there were approximately 83,585,542 shares of Hortonworks
6 common stock outstanding, held by hundreds to thousands of individuals and entities
7 scattered throughout the country. The actual number of public shareholders of
8 Hortonworks will be ascertained through discovery;

9 b. There are questions of law and fact that are common to the Class that
10 predominate over any questions affecting only individual members, including the
11 following:

- 12 i) whether Defendants disclosed material information that includes
13 non-GAAP financial measures without a presentation and
14 reconciliation of the same non-GAAP financial measures to their
15 most directly comparable GAAP equivalent in violation of Section
16 14(a) of the Exchange Act;
- 17 ii) whether Defendants have misrepresented or omitted material
18 information concerning the Proposed Transaction in the S-4 in
19 violation of Section 14(a) of the Exchange Act;
- 20 iii) whether the Individual Defendants have violated Section 20(a) of
21 the Exchange Act; and
- 22 iv) whether Plaintiff and other members of the Class will suffer
23 irreparable harm if compelled to vote their shares regarding the
24 Proposed Transaction based on the materially incomplete and
25 misleading S-4.

1 c. Plaintiff is an adequate representative of the Class, has retained competent
2 counsel experienced in litigation of this nature, and will fairly and adequately protect the
3 interests of the Class;

4 d. Plaintiff's claims are typical of the claims of the other members of the Class
5 and Plaintiff does not have any interests adverse to the Class;

6 e. The prosecution of separate actions by individual members of the Class
7 would create a risk of inconsistent or varying adjudications with respect to individual
8 members of the Class, which would establish incompatible standards of conduct for the
9 party opposing the Class;

10 f. Defendants have acted on grounds generally applicable to the Class with
11 respect to the matters complained of herein, thereby making appropriate the relief sought
12 herein with respect to the Class as a whole; and

13 g. A class action is superior to other available methods for fairly and
14 efficiently adjudicating the controversy.

15 **SUBSTANTIVE ALLEGATIONS**

16 23. Hortonworks, Inc. provides global data management solutions via open-source
17 platforms, which individual customers can modify and share with others through the Company's
18 central repository. The Company serves clients throughout the world.

19 24. On October 3, 2018, the Company announced the Proposed Transaction in a press
20 release which states, in pertinent part:

21 **PALO ALTO, Calif. and SANTA CLARA, Calif., October 3, 2018** — Cloudera,
22 Inc. (NYSE: CLDR) and Hortonworks, Inc. (Nasdaq: HDP) jointly announced
23 today that they have entered into a definitive agreement under which the companies
24 will combine in an all-stock merger of equals. The transaction, which has been
25 unanimously approved by the Boards of Directors of both companies, will create
26 the world's leading next generation data platform provider, spanning multi-cloud,
27 on-premises and the Edge. The combination establishes the industry standard for
28 hybrid cloud data management, accelerating customer adoption, community
development and partner engagement.

1 Tom Reilly, chief executive officer at Cloudera, stated, “Our businesses are highly
2 complementary and strategic. By bringing together Hortonworks’ investments in
3 end-to-end data management with Cloudera’s investments in data warehousing and
4 machine learning, we will deliver the industry’s first enterprise data cloud from the
Edge to AI. This vision will enable our companies to advance our shared
commitment to customer success in their pursuit of digital transformation.”

5 “This compelling merger will create value for our respective stockholders and allow
6 customers, partners, employees and the open source community to benefit from the
7 enhanced offerings, larger scale and improved cost competitiveness inherent in this
8 combination,” said Rob Bearden, chief executive officer of Hortonworks.
9 “Together, we are well positioned to continue growing and competing in the
streaming and IoT, data management, data warehousing, machine learning/AI and
hybrid cloud markets. Importantly, we will be able to offer a broader set of offerings
that will enable our customers to capitalize on the value of their data.”

10 Under the terms of the transaction agreement, Cloudera stockholders will own
11 approximately 60% of the equity of the combined company and Hortonworks
12 stockholders will own approximately 40%. Hortonworks stockholders will receive
13 1.305 common shares of Cloudera for each share of Hortonworks stock owned,
which is based on the 10-day average exchange ratio of the two companies’ prices
though October 1, 2018. The companies have a combined fully-diluted equity value
of \$5.2 billion based on closing prices on October 2, 2018.

14 **Transaction Highlights**

- 15 • Establishes the next generation data platform leader with increased scale and
16 resources to deliver the industry’s first enterprise data cloud, providing the
17 ease of use and elasticity of the public cloud from the data center, to the Edge
and everywhere in between
- 18 • Creates a superior unified platform and clear industry standard from the Edge
to AI, substantially benefiting customers, partners and the community
- 19 • Accelerates market development and fuels innovation in IoT, streaming, data
warehouse, hybrid cloud, machine learning/AI
- 20 • Expands market opportunity with complementary offerings, including
Hortonworks DataFlow and Cloudera Data Science Workbench
- 21 • Enhances partnerships with public cloud vendors and systems integrators
- 22 • Expected to generate significant financial benefits and improved margin
profile:
 - 23 ○ Approximately \$720 million in revenue
 - 24 ○ More than 2,500 customers
 - 25 ○ More than 800 customers over \$100,000 ARR
 - 26 ○ More than 120 customers over \$1 million ARR
 - 27 ○ More than \$125 million in annual cost synergies
 - 28 ○ More than \$150 million cash flow in CY20
 - Over \$500 million cash, no debt

1 **Management and Board of Directors**

2 Following completion of the transaction, Cloudera’s Chief Executive Officer, Tom
3 Reilly, will serve as Chief Executive Officer; Hortonworks’ Chief Operating
4 Officer, Scott Davidson, will serve as Chief Operating Officer; Hortonworks’ Chief
5 Product Officer, Arun C. Murthy, will serve as Chief Product Officer; and
6 Cloudera’s Chief Financial Officer, Jim Frankola, will serve as Chief Financial
7 Officer, of the combined company. Hortonworks’ Chief Executive Officer, Rob
8 Bearden, will join the board of directors. Current Cloudera board member, Marty
9 Cole, will become Chairman of the board of directors.

10 The board of directors of the newly-formed company will initially comprise nine
11 directors. Four directors, including Mr. Bearden, will come from Hortonworks’
12 existing board of directors. Five directors, including Mr. Reilly, will come from
13 Cloudera’s existing board of directors. A tenth director will be selected by the
14 combined board.

15 A majority of the board of directors will be independent under New York Stock
16 Exchange standards.

17 25. The Merger Consideration appears inadequate in light of the Company’s recent
18 financial performance. Indeed, the implied share value of the Merger Consideration represents an
19 almost 16% discount to the Company’s 52-week high of \$26.22.¹ The Company has reported
20 steady sales growth for the past four fiscal years and for the most recent fiscal year, 2017, reported
21 double-digit net income growth. Moreover, the Company has reported consistent revenue growth
22 for the past three fiscal years and double-digit free cash flow growth for the past two fiscal years.

23 26. In sum, it appears that Hortonworks is well-positioned for financial growth, and
24 that the Merger Consideration fails to adequately compensate the Company’s shareholders. It is
25 imperative that Defendants disclose the material information they have omitted from the S-4,
26 discussed in detail below, so that the Company’s shareholders can properly assess the fairness of
27 the Merger Consideration for themselves and make an informed decision concerning whether or
28 not to vote in favor of the Proposed Transaction.

¹ The implied share value of the Merger Consideration was calculated by multiplying the
exchange ratio, 1.305, by \$16.90, Cloudera’s closing price on October 2, 2018, the day before the
Proposed Transaction was announced.

1 **The Materially Incomplete and Misleading S-4**

2 27. On November 5, 2018, Defendants caused the S-4 to be filed with the SEC in
3 connection with the Proposed Transaction. The S-4 solicits the Company's shareholders to vote
4 in favor of the Proposed Transaction. Defendants were obligated to carefully review the S-4 before
5 it was filed with the SEC and disseminated to the Company's shareholders to ensure that it did not
6 contain any material misrepresentations or omissions. However, the S-4 misrepresents and/or
7 omits both required and material information that is necessary for the Company's shareholders to
8 make an informed decision concerning whether to vote in favor of the Proposed Transaction, in
9 violation of Sections 14(a) and 20(a) of the Exchange Act.

10 ***The Materiality of Financial Projections***

11 28. A company's financial projections are material information a board relies on to
12 determine whether to approve a merger transaction and recommend that shareholders vote to
13 approve the transaction. Here, the financial forecasts were relied on to approve the Merger
14 Agreement and recommend the Proposed Transaction to shareholders as the S-4 discloses that the
15 financial projections were prepared by the Company's management and "made available to the
16 Hortonworks board and to the Cloudera board, as well as their respective financial advisors, for
17 purposes of considering and evaluating the merger." S-4 at 72.

18 29. When soliciting proxies from shareholders, a company must furnish the
19 information found in Schedule 14A (codified as 17 C.F.R. § 240.14a-101). Item 14 of Schedule
20 14A sets forth the information a company must disclose when soliciting proxies regarding mergers
21 and acquisitions. In regard to financial information, companies are required to disclose "financial
22 information required by Article 11 of Regulation S-X[.]" which includes Item 10 of Regulation S-
23 K. See Item 14(7)(b)(11) of 17 C.F.R. § 240.14a-101.

24 30. Under Item 10 of Regulation S-K, companies are encouraged to disclose
25 "management's projections of future economic performance that have a reasonable basis and are
26 presented in an appropriate format." 17 C.F.R. § 229.10(b). Although the SEC recognizes the
27

1 usefulness of disclosing projected financial metrics, the SEC cautions companies to “take care to
2 assure that the choice of items projected is not susceptible of misleading inferences through
3 selective projection of only favorable items.” *Id.*

4 31. In order to facilitate investor understanding of the Company’s financial projections,
5 the SEC provides companies with certain factors “to be considered in formulating and disclosing
6 such projections[,]” including:

7 (i) When management chooses to include its projections in a Commission filing,
8 *the disclosures accompanying the projections should facilitate investor*
9 *understanding of the basis for and limitations of projections.* In this regard investors
10 should be cautioned against attributing undue certainty to management’s
11 assessment, and the Commission believes that investors would be aided by a
12 statement indicating management’s intention regarding the furnishing of updated
13 projections. *The Commission also believes that investor understanding would be*
enhanced by disclosure of the assumptions which in management’s opinion are
most significant to the projections or are the key factors upon which the financial
results of the enterprise depend and encourages disclosure of assumptions in a
manner that will provide a framework for analysis of the projection.

14 (ii) Management also should consider whether disclosure of the accuracy or
15 inaccuracy of previous projections would provide investors with important insights
16 into the limitations of projections. In this regard, *consideration should be given to*
17 *presenting the projections in a format that will facilitate subsequent analysis of the*
18 *reasons for differences between actual and forecast results.* An important benefit
may arise from the systematic analysis of variances between projected and actual
results on a continuing basis, since such disclosure may highlight for investors the
most significant risk and profit-sensitive areas in a business operation.

19 17 C.F.R. § 229.10(b)(3) (emphasis added).

20 32. Here, Hortonworks’ shareholders would clearly find complete and non-misleading
21 financial projections material in deciding how to vote, considering that in making its
22 recommendation that shareholders vote in favor of the Proposed Transaction, the Board
23 specifically considered “the financial projections for Hortonworks prepared by Hortonworks
24 management, which reflected certain assumptions of Hortonworks’ senior management[.]” S-4 at
25 70.

26 33. As discussed further below, the financial projections here do not provide
27

1 Hortonworks' shareholders with a materially complete understanding of the assumptions and key
2 factors considered in developing the financial projections.

3 ***The Financial Projections are Materially Incomplete***

4 34. The S-4 discloses financial projections for the years 2019-2023 for the Company
5 (the "Hortonworks Financial Forecasts"), as well as financial forecasts for the combined company
6 (the "Combined Company Financial Forecasts"), on pages 72-73. However, the S-4 fails to
7 provide material information concerning the projections, which were developed by the Company's
8 management and relied upon in recommending that shareholders vote in favor of the Proposed
9 Transaction.

10 35. Specifically, the S-4 provides, *inter alia*, values for non-GAAP Operating Income
11 (Loss) and Unlevered Free Cash Flow ("UFCF"), S-4 at 73, but fails to provide the line items used
12 in their respective calculation or a reconciliation of these non-GAAP measures to their respective
13 most comparable GAAP measures.

14 36. In regard to the Hortonworks Financial Forecasts, the S-4 defines non-GAAP
15 Operating Income (Loss) as "a non-GAAP financial measure calculated to exclude share-based
16 compensation, amortization of intangibles and other non-recurring items." S-4 at 73. In regard to
17 the Combined Company Financial Forecasts, non-GAAP Operating Income (Loss) is "inclusive
18 of revenue synergies." S-4 at 73. Nevertheless, the only line item disclosed to calculate this
19 measure is "revenue synergies".

20 37. UFCF is defined as "a non-GAAP financial measure calculated by starting with
21 Non-GAAP Operating Income (as shown in the table above) and subtracting cash taxes paid and
22 capital expenditures, and then adding back depreciation expense and decrease in net working
23 capital." S-4 at 73. Although not explicit, the Combined Company Financial Forecasts appear to
24 include revenue synergies in its UFCF calculation as well. Similarly, no other line items used in
25 the calculation of UFCF are disclosed.

26 38. The S-4 further discloses that "Hortonworks believe[s] that there is a degree of
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1 volatility with respect to certain GAAP measures, and *certain adjustments made to arrive at the*
2 *relevant non-GAAP measures*, which preclude[s] . . . Hortonworks from providing accurate
3 forecasted non-GAAP to GAAP reconciliations.” S-4 at 74 (emphasis added).

4 39. The S-4 provides an incomplete and materially misleading understanding of the
5 Company’s future financial prospects and the inputs and assumptions for which those prospects
6 are based upon. Although the Defendants contend that the line items referenced above cannot be
7 accurately forecasted, it is quite clear that those line items were in fact forecasted and utilized in
8 calculating the non-GAAP measures disclosed.

9 40. As such, the financial projections disclosed on pages 72-74 of the S-4 are materially
10 misleading as shareholders are unable to discern the veracity of the financial projections, which
11 were apparently developed using line items that the Company claims were “not available.” S-4 at
12 74.

13 41. As a result of the Company’s incomplete disclosures surrounding the calculation of
14 the above referenced financial metrics, the S-4 is materially misleading as shareholders are
15 provided an incomplete and materially misleading understanding of the Company’s future
16 prospects.

17 42. As such, this information must be disclosed in order to cure the materially
18 misleading disclosures regarding both the financial projections developed by the Company as well
19 as the projections relied upon by the Company’s financial advisors.

20 ***The Financial Projections Violate Regulation G***

21 43. The SEC has acknowledged that potential “misleading inferences” are exacerbated
22 when the disclosed information contains non-GAAP financial measures² and adopted Regulation
23

24
25 ² Non-GAAP financial measures are numerical measures of future financial performance
26 that exclude amounts or are adjusted to effectively exclude amounts that are included in the most
27 directly comparable GAAP measure. 17 C.F.R. § 244.101(a)(1).

1 G³ “to ensure that investors and others are not misled by the use of non-GAAP financial
2 measures.”⁴ More specifically, the company must disclose the most directly comparable GAAP
3 financial measure and a reconciliation (by schedule or other clearly understandable method) of the
4 differences between the non-GAAP financial measure disclosed or released with the most
5 comparable financial measure or measures calculated and presented in accordance with GAAP.
6 17 C.F.R. § 244.100. This is because the SEC believes “this reconciliation will help investors . . .
7 to better evaluate the non-GAAP financial measures . . . [and] more accurately evaluate companies’
8 securities and, in turn, result in a more accurate pricing of securities.”⁵

9 44. Moreover, the SEC has publicly stated that the use of non-GAAP financial
10 measures can be misleading.⁶ Former SEC Chairwoman Mary Jo White has stated that the frequent
11 use by publicly traded companies of unique company-specific non-GAAP financial measures (as
12 Hortonworks included in the S-4 here), implicates the centerpiece of the SEC’s disclosures regime:

13 In too many cases, the non-GAAP information, which is meant to supplement the
14 GAAP information, has become the key message to investors, crowding out and
15 effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant,
16 Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and
17 I, along with other members of the staff, have spoken out frequently about our
18 concerns to raise the awareness of boards, management and investors. And last
19 month, the staff issued guidance addressing a number of troublesome practices
20 *which can make non-GAAP disclosures misleading*: the lack of equal or greater
21 prominence for GAAP measures; exclusion of normal, recurring cash operating

19 ³ Item 10 of Regulations S-K and S-B were amended to reflect the requirements of
20 Regulation G.

21 ⁴ United States Securities and Exchange Commission, *Final Rule: Conditions for Use of*
22 *Non-GAAP Financial Measures* (2002), available at <https://www.sec.gov/rules/final/33-8176.htm>
(last visited November 14, 2018) (“SEC, *Final Rule*”).

23 ⁵ SEC, *Final Rule*.

24 ⁶ See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC’s*
25 *Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation
26 (June 24, 2016), available at [https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-](https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/)
27 [measures-the-secs-evolving-views/](https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/) (last visited November 14, 2018); Gretchen Morgenson,
28 *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. Times, Apr. 22, 2016,
available at [http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-](http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0)
[spin-losses-into-profits.html?_r=0](http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0) (last visited November 14, 2018).

1 expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-
2 picking; and the use of cash per share data. I strongly urge companies to carefully
3 consider this guidance and revisit their approach to non-GAAP disclosures. I also
4 urge again, as I did last December, that appropriate controls be considered and that
5 audit committees carefully oversee their company's use of non-GAAP measures
6 and disclosures.⁷

5 45. Compliance with Regulation G is mandatory under Section 14(a), and non-
6 compliance constitutes a violation of Section 14(a). Thus, in order to bring the S-4 into compliance
7 with Regulation G, Defendants must provide a reconciliation of the non-GAAP financial measures
8 to their respective most comparable GAAP financial measures.

9 ***The Financial Projections are Materially Misleading and Violate SEC Rule 14a-9***

10 46. In addition to the S-4's violation of Regulation G, the lack of reconciliation or, at
11 the very least, the line items utilized in calculating the non-GAAP measures renders the financial
12 projections disclosed materially misleading as shareholders are unable to understand the
13 differences between the non-GAAP measures and their respective most comparable GAAP
14 financial measures.

15 47. Such projections are necessary to make the non-GAAP projections included in the
16 S-4 not misleading for the reasons discussed above. Indeed, Defendants acknowledge the financial
17 forecasts "are subject to change and are susceptible to multiple interpretations[.]" S-4 at 74. As
18 such, the projections are clearly material, and shareholders would clearly want a complete and
19 non-misleading understanding of those projections.

20 48. As such, in order to cure the materially misleading nature of the projections under
21 SEC Rule 14a-9 as a result of the omitted information on pages 72-74, Defendants must provide a
22 reconciliation table of the non-GAAP financial measures to the most comparable GAAP measures.

23 49. In sum, the S-4 independently violates: (i) Regulation G, which requires a
24

25 ⁷ Mary Jo White, *Keynote Address, International Corporate Governance Network Annual*
26 *Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-*
27 *GAAP, and Sustainability* (June 27, 2016), available at [https://www.sec.gov/news/speech/chair-](https://www.sec.gov/news/speech/chair-white-icgn-speech.html)
[white-icgn-speech.html](https://www.sec.gov/news/speech/chair-white-icgn-speech.html) (emphasis added) (footnotes omitted) (last visited November 14, 2018).

1 presentation and reconciliation of any non-GAAP financial measure to its most directly
2 comparable GAAP equivalent; and (ii) Rule 14a-9, since the material omitted information renders
3 certain statements, discussed above, materially incomplete and misleading. As the S-4
4 independently contravenes the SEC rules and regulations, Defendants violated Section 14(a) and
5 Section 20(a) of the Exchange Act by filing the S-4 to garner votes in support of the Proposed
6 Transaction from Hortonworks shareholders.

7 50. Absent disclosure of the foregoing material information prior to the special
8 shareholder meeting, Plaintiff and the other members of the Class will be unable to make a fully-
9 informed decision regarding whether to vote in favor of the Proposed Transaction, and are thus
10 threatened with irreparable harm, warranting the injunctive relief sought herein.

11 **COUNT I**

12 **(Against All Defendants for Violations of Section 14(a) of the Exchange Act**
13 **and 17 C.F.R. § 244.100 Promulgated Thereunder)**

14 51. Plaintiff incorporates each and every allegation set forth above as if fully set forth
15 herein.

16 52. Section 14(a)(1) of the Exchange Act makes it “unlawful for any person, by the use
17 of the mails or by any means or instrumentality of interstate commerce or of any facility of a
18 national securities exchange or otherwise, in contravention of such rules and regulations as the
19 Commission may prescribe as necessary or appropriate in the public interest or for the protection
20 of investors, to solicit or to permit the use of his name to solicit any [S-4] or consent or
21 authorization in respect of any security (other than an exempted security) registered pursuant to
22 section 78l of this title.” 15 U.S.C. § 78n(a)(1).

23 53. As set forth above, the S-4 omits information required by SEC Regulation G, 17
24 C.F.R. § 244.100, which independently violates Section 14(a). SEC Regulation G, among other
25 things, requires an issuer that chooses to disclose a non-GAAP measure to provide a presentation
26 of the “most directly comparable” GAAP measure, and a reconciliation “by schedule or other
27

1 clearly understandable method” of the non-GAAP measure to the “most directly comparable”
2 GAAP measure. 17 C.F.R. § 244.100(a).

3 54. The failure to reconcile the numerous non-GAAP financial measures included in
4 the S-4 violates Regulation G and constitutes a violation of Section 14(a).

5 55. The misrepresentations and omissions in the S-4 are material to Plaintiff and the
6 Class, who will be deprived of their right to cast an informed vote if such misrepresentations and
7 omissions are not corrected prior to the vote on the Proposed Transaction.

8 56. Plaintiff and the Class have no adequate remedy at law. Only through the exercise
9 of this Court’s equitable powers can Plaintiff and the Class be fully protected from the immediate
10 and irreparable injury that Defendants’ actions threaten to inflict.

11 **COUNT II**

12 **(Against All Defendants for Violations of Section 14(a) of the Exchange Act**
13 **and Rule 14a-9 Promulgated Thereunder)**

14 57. Plaintiff incorporates each and every allegation set forth above as if fully set forth
15 herein.

16 58. SEC Rule 14a-9 prohibits the solicitation of shareholder votes in S-4
17 communications that contain “any statement which, at the time and in the light of the circumstances
18 under which it is made, is false or misleading with respect to any material fact, or which omits to
19 state any material fact necessary in order to make the statements therein not false or misleading[.]”
20 17 C.F.R. § 240.14a-9.

21 59. Regulation G similarly prohibits the solicitation of shareholder votes by “mak[ing]
22 public a non-GAAP financial measure that, taken together with the information accompanying that
23 measure . . . contains an untrue statement of a material fact or *omits to state a material fact*
24 *necessary in order to make the presentation of the non-GAAP financial measure . . . not*
25 *misleading.*” 17 C.F.R. § 244.100(b) (emphasis added).

26 60. Defendants have issued the S-4 with the intention of soliciting shareholder support
27

1 for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination
2 of the S-4, which fails to provide critical information regarding, amongst other things, the financial
3 projections for the Company.

4 61. In so doing, Defendants made untrue statements of fact and/or omitted material
5 facts necessary to make the statements made not misleading. Each of the Individual Defendants,
6 by virtue of their roles as directors, were aware of the omitted information but failed to disclose
7 such information, in violation of Section 14(a). The Individual Defendants were therefore
8 negligent, as they had reasonable grounds to believe material facts existed that were misstated or
9 omitted from the S-4, but nonetheless failed to obtain and disclose such information to
10 shareholders although they could have done so without extraordinary effort.

11 62. The Individual Defendants knew or were negligent in not knowing that the S-4 is
12 materially misleading and omits material facts that are necessary to render it not misleading. The
13 Individual Defendants undoubtedly reviewed and relied upon the omitted information identified
14 above in connection with their decision to approve and recommend the Proposed Transaction.

15 63. The Individual Defendants knew or were negligent in not knowing that the material
16 information identified above has been omitted from the S-4, rendering the sections of the S-4
17 identified above to be materially incomplete and misleading.

18 64. The Individual Defendants were, at the very least, negligent in preparing and
19 reviewing the S-4. The preparation of an S-4 statement by corporate insiders containing materially
20 false or misleading statements or omitting a material fact constitutes negligence. The Individual
21 Defendants were negligent in choosing to omit material information from the S-4 or failing to
22 notice the material omissions in the S-4 upon reviewing it, which they were required to do carefully
23 as the Company's directors. Indeed, the Individual Defendants were intricately involved in the
24 process leading up to the signing of the Merger Agreement and the preparation of the Company's
25 financial projections.

26 65. Hortonworks is also deemed negligent as a result of the Individual Defendants'

1 negligence in preparing and reviewing the S-4.

2 66. The misrepresentations and omissions in the S-4 are material to Plaintiff and the
3 Class, who will be deprived of their right to cast an informed vote if such misrepresentations and
4 omissions are not corrected prior to the vote on the Proposed Transaction.

5 67. Plaintiff and the Class have no adequate remedy at law. Only through the exercise
6 of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate
7 and irreparable injury that Defendants' actions threaten to inflict.

8 **COUNT III**

9 **(Against the Individual Defendants for Violations**
10 **of Section 20(a) of the Exchange Act)**

11 68. Plaintiff incorporates each and every allegation set forth above as if fully set forth
12 herein.

13 69. The Individual Defendants acted as controlling persons of Hortonworks within the
14 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as
15 officers and/or directors of Hortonworks, and participation in and/or awareness of the Company's
16 operations and/or intimate knowledge of the incomplete and misleading statements contained in
17 the S-4 filed with the SEC, they had the power to influence and control and did influence and
18 control, directly or indirectly, the decision making of the Company, including the content and
19 dissemination of the various statements that Plaintiff contends are materially incomplete and
20 misleading.

21 70. Each of the Individual Defendants was provided with or had unlimited access to
22 copies of the S-4 and other statements alleged by Plaintiff to be misleading prior to and/or shortly
23 after these statements were issued and had the ability to prevent the issuance of the statements or
24 cause the statements to be corrected.

25 71. In particular, each of the Individual Defendants had direct and supervisory
26 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had
27

1 the power to control or influence the particular transactions giving rise to the Exchange Act
2 violations alleged herein and exercised the same. The S-4 at issue contains the unanimous
3 recommendation of each of the Individual Defendants to approve the Proposed Transaction. They
4 were thus directly involved in preparing the S-4.

5 72. In addition, as described herein and set forth at length in the S-4, the Individual
6 Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The
7 S-4 purports to describe the various issues and information that the Individual Defendants
8 reviewed and considered. The Individual Defendants participated in drafting and/or gave their
9 input on the content of those descriptions.

10 73. By virtue of the foregoing, the Individual Defendants have violated Section 20(a)
11 of the Exchange Act.

12 74. As set forth above, the Individual Defendants had the ability to exercise control
13 over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 by
14 their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these
15 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate
16 result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

17 75. Plaintiff and the Class have no adequate remedy at law. Only through the exercise
18 of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate
19 and irreparable injury that Defendants' actions threaten to inflict.

20 **PRAYER FOR RELIEF**

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

22 A. Declaring that this action is properly maintainable as a Class Action and certifying
23 Plaintiff as Class Representative and his counsel as Class Counsel;

24 B. Enjoining Defendants and all persons acting in concert with them from proceeding
25 with the shareholder vote on the Proposed Transaction or consummating the Proposed Transaction,
26 unless and until the Company discloses the material information discussed above which has been
27

1 omitted from the S-4;

2 C. Directing Defendants to account to Plaintiff and the Class for all damages sustained
3 as a result of their wrongdoing;

4 D. Awarding Plaintiff the costs and disbursements of this action, including reasonable
5 attorneys' and expert fees and expenses; and

6 E. Granting such other and further relief as this Court may deem just and proper.

7 **JURY DEMAND**

8 Plaintiff demands a trial by jury on all issues so triable.

9 Dated: November 15, 2018

10 Respectfully submitted,

11 **FARUQI & FARUQI, LLP**

12 **OF COUNSEL:**

13 **FARUQI & FARUQI, LLP**

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Counsel for Plaintiff

Counsel for Plaintiff

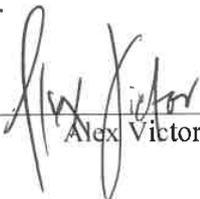
CERTIFICATION OF PROPOSED LEAD PLAINTIFF

I, Alex Victor ("Plaintiff"), declare, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed a draft complaint against Hortonworks, Inc. ("Hortonworks") and its board of directors and has authorized the filing of a complaint substantially similar to the one I reviewed.
2. Plaintiff selects Faruqi & Faruqi, LLP and any firm with which it affiliates for the purpose of prosecuting this action as my counsel for purposes of prosecuting my claim against defendants.
3. Plaintiff did not purchase the security that is the subject of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
4. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
5. Plaintiff's transactions in Hortonworks securities that are the subject of the complaint during the class period specified in the complaint are set forth in the chart attached hereto.
6. In the past three years, Plaintiff has not sought to serve nor has served as a representative party on behalf of a class in an action filed under the federal securities laws, except as specified below:
7. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing information is correct to the best of my knowledge.

Signed this 14th day of November, 2018.



Alex Victor

| Transaction (Purchase or Sale) | Trade Date | Quantity |
|--|-------------------|-----------------|
| Purchase | 05/05/17 | 100 |
| | | |
| | | |
| | | |

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

Alex Victor

(b) County of Residence of First Listed Plaintiff New York Cnty., NY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Faruqi & Faruqi, LLP 10866 Wilshire Blvd, Suite 1470, Los Angeles, CA 90024 Tel: 424-256-2884

DEFENDANTS

Hortonworks, Inc., Robert Bearden, Kevin Klausmeyer, Martin Fink, Jay Rossiter, Michelangelo Volpi, Paul Cormier, and Peter Fenton

County of Residence of First Listed Defendant Santa Clara Cnty., CA (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 [X] 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant [] 4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

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

Large table with columns: CONTRACT, REAL PROPERTY, TORTS (PERSONAL INJURY, 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)

- [X] 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): Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 15 U.S.C. §§ 78n(a) and 78t(a)
Brief description of cause: Private Securities Litigation Reform Act; Violation of the Securities Exchange Act in merger of Hortonworks, Inc. and Cloudera, Inc.

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: [X] Yes [] No

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

JUDGE [] DOCKET NUMBER []

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

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

DATE 11/15/2018 SIGNATURE OF ATTORNEY OF RECORD /s/Benjamin Heikali

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.