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20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA

22 Case No. 18-cv-4844-BLF

23 ECF CASE

24 **CONSOLIDATED CLASS ACTION**  
25 **COMPLAINT FOR VIOLATIONS OF**  
26 **THE FEDERAL SECURITIES LAWS**

27 DEMAND FOR JURY TRIAL

28 Dept: Courtroom 3, 5<sup>th</sup> Floor  
Judge: Honorable Beth Labson Freeman

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION ..... 1

II. JURISDICTION AND VENUE ..... 7

III. PARTIES ..... 8

    A. Lead Plaintiff ..... 8

    B. Defendants ..... 8

IV. FORMER ORACLE EMPLOYEES WHO SUBSTANTIATE THE ALLEGATIONS ..... 11

V. SUMMARY OF THE FRAUD ..... 13

    A. Oracle Belatedly Pivots From Its Stagnating Legacy “On-Premises” Business To Focus On The Growing “Cloud” Market ..... 13

    B. As Oracle Begins to Ramp Its Cloud Business, It Denies Rumors That It Generates Cloud Revenue Through Improper Sales Tactics ..... 17

    C. Throughout The Class Period, Defendants Report Astonishing Growth In Oracle’s Cloud Business, Which They Attribute To Oracle’s Supposedly Superior Cloud Products and Business Practices ..... 22

    D. In Reality, Oracle’s Supposedly Explosive Cloud Growth Was Fueled By Extortionate and Coercive Sales Practices ..... 26

        1. Oracle Fuels Its Cloud Growth By Coercing Customers To Subscribe To Cloud Products Under Threat Of Audit Penalties ..... 27

        2. Oracle Also Uses “Attached Deals” To Disguise Legacy On-Premise Revenue As All-Important Cloud Revenue And Pad The Company’s Cloud Growth ..... 36

        3. Regulator Findings And Industry Experts Further Confirm Oracle’s Use Of “Audits” To Generate Cloud Revenues From Customers Who Do Not Actually Want Oracle Cloud Product ..... 42

    E. The Truth About Oracle’s Cloud Revenue Growth Emerges ..... 46

        1. On December 14, 2017, Oracle Reports Stagnating Cloud Growth ..... 47

        2. On March 19, 2018, Oracle Reports That Its Cloud Growth Slowed Even More Significantly ..... 48

        3. On June 14, 2018, JPMorgan Releases a Large-Scale CIO Survey Showing That Oracle Is “Trailing In Cloud Computing Plans” ..... 50

1           4.     On June 19, 2018, Oracle Reports Additional Cloud  
2                 Slowdowns And Stuns Investors By Announcing It Will No  
3                 Longer Report Cloud Business Financial Results .....51

4     VI.    ADDITIONAL ALLEGATIONS OF SCIENTER .....54

5         A.    Defendants Knew And Had Access To Information Undermining  
6                 Their Statements to Investors .....54

7         B.    Prior To Making Their Class Period Misstatements And  
8                 Omissions, Defendants Were Informed Of Allegations That Oracle  
9                 Generated Artificial Cloud Revenues Through Coercive Audits  
10                 And Sales Tactics .....55

11         C.    Defendants Specifically Denied The Allegations That They Were  
12                 Using Audits To Close Cloud Sales .....56

13         D.    Oracle’s Use Of Engineered Deals To Drive Cloud Sales Was  
14                 Widespread Throughout The Company, Occurring Across  
15                 Continents And In Multiple Different Business Units .....58

16         E.    Oracle Repeatedly Changed The Way It Reported Cloud Revenue  
17                 During The Class Period, Underscoring Its Efforts To Obscure  
18                 Declining Growth .....59

19         F.    Defendants’ Statements Touting Oracle’s Cloud Growth  
20                 Concerned The Single Most Important Issue Facing The Company  
21                 During The Class Period .....60

22         G.    Defendants Stated That They Were Deeply Focused On Oracle’s  
23                 Cloud Revenues.....62

24         H.    Defendant Kurian Sold Hundreds Of Millions Of Dollars’ Worth  
25                 Of Oracle Stock During The Class Period.....63

26         I.    The Executive Defendants Were Directly And Extensively  
27                 Involved In Developing And Maintaining Oracle’s Cloud Business .....65

28     VII. DEFENDANTS’ MATERIALLY FALSE AND MISLEADING  
STATEMENTS AND OMISSIONS .....69

       A.    Defendants’ Materially False and Misleading Statements and  
Omissions During Oracle’s Fiscal Third Quarter 2017.....69

       B.    Defendants’ Materially False And Misleading Statements And  
Omissions During Oracle’s Fiscal Fourth Quarter 2017 .....75

       C.    Defendants’ Materially False And Misleading Statements And  
Omissions During Oracle’s Fiscal First Quarter 2018 .....79

       D.    Defendants’ Materially False And Misleading Statements And  
Omissions During Oracle’s Fiscal Second Quarter 2018.....84

       E.    Defendants’ Materially False And Misleading Statements And  
Omissions During Oracle’s Fiscal Third Quarter 2018.....87

1 VIII. LOSS CAUSATION .....89  
 2 IX. THE INAPPLICABILITY OF THE STATUTORY SAFE HARBOR .....92  
 3 X. THE PRESUMPTION OF RELIANCE.....93  
 4 XI. CLASS ALLEGATIONS .....94  
 5 XII. CLAIMS BROUGHT PURSUANT TO THE EXCHANGE ACT .....95  
 6 COUNT I FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT  
 7 AND SEC RULE 10b-5 PROMULGATED THEREUNDER (AGAINST  
 8 ALL DEFENDANTS).....95  
 9 COUNT II FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE  
 10 ACT (AGAINST DEFENDANTS CATZ, HURD, AND ELLISON].....97  
 11 COUNT III FOR VIOLATION OF SECTION 20A OF THE EXCHANGE ACT  
 12 (AGAINST DEFENDANT KURIAN) .....99  
 13  
 14 XIII. PRAYER FOR RELIEF .....101  
 15  
 16 XIV. JURY DEMAND.....101  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1           Lead Plaintiff Union Asset Management Holding AG (“Lead Plaintiff”), by and through  
2 its undersigned counsel, brings this action pursuant to Sections 10(b), 20(a), and 20A of the  
3 Securities Exchange Act of 1934 (the “Exchange Act”), and U.S. Securities and Exchange  
4 Commission (“SEC”) Rule 10b-5 promulgated thereunder, on behalf of itself and all other persons  
5 or entities who purchased or otherwise acquired securities of Oracle Corporation (“Oracle” or the  
6 “Company”) during the period from March 15, 2017 to June 19, 2018, inclusive (the “Class  
7 Period”) and were damaged thereby (the “Class”). Lead Plaintiff alleges the following based upon  
8 personal knowledge as to itself and its own acts and upon information and belief as to all other  
9 matters. Lead Plaintiff’s information and belief is based on the ongoing investigation of its  
10 undersigned counsel, including from the following sources: (i) Oracle’s public filings with the  
11 SEC; (ii) research reports from securities and financial analysts; (iii) Company press releases and  
12 reports; (iv) Company website and marketing materials; (v) news and media reports concerning  
13 the Company and other facts related to this action; (vi) price and volume data for Oracle securities;  
14 (vii) accounts from former Oracle employees, some of whom were afraid to provide Lead Counsel  
15 with information for fear of retaliation by Oracle; (viii) documents obtained from the National  
16 Economic Prosecutor’s Office of Chile (the “FNE”) concerning its investigation; and (ix)  
17 additional materials and data concerning the Company and industry as identified herein. Lead  
18 Counsel’s investigation into the factual allegations continues, and many of the relevant facts are  
19 known only by the Defendants or are exclusively within their custody or control. Lead Plaintiff  
20 believes that substantial additional evidentiary support is likely to exist for the allegations set forth  
21 herein after a reasonable opportunity for discovery.

## 22       **I. INTRODUCTION**

23           1.       Prior to the Class Period, Larry Ellison, Oracle’s founder and strategic visionary,  
24 made a critical blunder by underestimating a fundamental shift in database technology that had  
25 serious implications for Oracle’s revenue growth. By the time senior management recognized this  
26 tactical error, Oracle was years behind its competitors in creating and selling the new technology,  
27 causing its revenues to stagnate. In an effort to make up this ground, Oracle resorted to  
28 systematically coercing and bribing its existing customers into making phony “purchases” of its

1 new product line. Throughout the Class Period, Defendants concealed these Company-wide sales  
2 tactics from investors, and publicly reported explosive – but, unbeknownst to investors, artificial  
3 – growth in Oracle’s critical new market. Defendants attributed this growth to supposedly  
4 legitimate factors, such as the superiority of Oracle’s products and sales teams, while rebuffing  
5 any questions about whether Oracle engaged in aggressive sales tactics to boost its new revenue  
6 stream.

7         2.         The truth, however, eventually emerged. By the end of the Class Period, customers  
8 were refusing to renew the short-term subscriptions that had been pushed on them under duress,  
9 and other customers were resisting the Company’s strong-arm tactics. Oracle’s sales growth  
10 declined precipitously, revealing to the market that the Company’s previously-reported explosive  
11 sales growth was neither genuine nor sustainable. The Company’s stock price plummeted. Shortly  
12 thereafter, senior management announced that they would no longer disclose critical information  
13 regarding Oracle’s faltering new business, causing the stock price to decline sharply again.

14         3.         This securities fraud class action arises from misrepresentations by Oracle and its  
15 senior executives concerning the most important initiative in Oracle’s history – its purported  
16 transformation from a struggling “on-premises” database technology company into a high-growth  
17 “cloud” computing enterprise. Historically, Oracle’s principal business was selling “on-premises”  
18 database technology and software, which is installed and run within the physical confines of the  
19 customer’s data center and computers. Several years before the Class Period, a new database  
20 technology began to emerge as a challenger to Oracle’s historic business model – the “cloud.” As  
21 the name suggests, cloud database technology was located remotely – in a “cloud computing  
22 platform” established by the vendor – and was accessed by the customer via the internet.

23         4.         In a critical strategic error, Oracle dismissed the cloud for years. Defendant Ellison  
24 famously ridiculed cloud technology as “gibberish,” “idiocy,” and “nonsense.” However, the  
25 cloud soon became an undeniable force in the database software field. Other companies, such as  
26 Amazon and Microsoft, that quickly embraced the new technology, were soon generating billions  
27 of dollars in quarterly cloud-related revenue, reporting enormous growth rates as high as 90%.

1           5.       Meanwhile, Oracle’s on-premises business begin to stagnate and even decline. For  
2 a company in the technology field – where revenue growth is king – a stagnating revenue stream  
3 is tantamount to death in the eyes of the market. As one market commentator remarked, the “cloud  
4 has become a matter of existential importance to Oracle as its legacy business of selling [on-  
5 premises] software licenses and hardware products erodes.”

6           6.       Oracle therefore embarked on a “pivot to the cloud” in an effort to surmount the  
7 declines in its legacy business and remain relevant to investors. Given the stakes riding on this  
8 initiative, Oracle shareholders and other stock market participants were keenly focused on Oracle’s  
9 ability to transform itself into a cloud company. As Defendant Catz explained, Oracle’s “move to  
10 cloud” was “the biggest and most important opportunity in our Company’s history.”

11           7.       Oracle faced a basic problem, however. Having dismissed cloud technology for so  
12 long, its cloud-based offerings lagged behind competitors, forcing Oracle to scramble to play catch  
13 up. Nevertheless, Oracle assured investors that it had surmounted this problem by virtue of its  
14 superior cloud products and sales operation.

15           8.       On the first day of the Class Period, March 15, 2017, Defendants (falsely) assured  
16 investors that Oracle had successfully turned the corner in its quest to remake itself as a cloud  
17 company, with eye-popping results. That day, Oracle announced that its cloud revenue had jumped  
18 110% year-over-year, to \$1.2 billion for the quarter. Defendant Safra Catz, Oracle’s co-CEO,  
19 stated that Oracle was experiencing “hypergrowth ... in the cloud” and emphasized that “[o]ur  
20 pivot to the cloud is now clearly in full swing.” Showing that Oracle’s cloud growth more than  
21 made up for troubles in its legacy business, Catz asserted that “the increase in revenue from our  
22 cloud business has overtaken new software license declines on an annual basis,” marking “a  
23 significant milestone in our transformation.” Defendant Hurd emphasized that Oracle was now  
24 “the fastest-growing scale cloud business in the world.”

25           9.       A few months later, Oracle again delivered what appeared to be blockbuster results,  
26 reporting that its quarterly cloud revenues had surged to \$1.4 billion. Defendant Catz again  
27 underscored the central role of cloud growth in driving Oracle’s profitability, stating that “[t]his  
28

1 cloud hypergrowth is expanding our operating margins,” and “[t]he cloud has become our  
2 predominant growth vehicle.”

3 10. Defendants attributed Oracle’s remarkable cloud growth to Oracle’s superior  
4 technology and sales force. Defendant Hurd, for instance, stated that Oracle’s outstanding results  
5 were driven by the fact that “[w]e’re better” than competitors – “Our products are better. Our sales  
6 force is better. Our ability to implement is better.” And when questions surfaced in the press  
7 asking whether Oracle was boosting its cloud performance by engaging in aggressive sales tactics,  
8 the Company denied them, calling such suggestions “inaccurate” “rumor” that was “absolutely not  
9 true.”

10 11. The market reacted very favorably to Defendants’ statements. *Barron’s* reported  
11 that Oracle “wowed Wall Street with a financial report that put to rest fears of the company being  
12 rendered obsolete by cloud computing.” Another industry observer reported that analysts were  
13 “ga-ga during the conference call following [Oracle’s earnings] report, responding to the results  
14 with phrases such as ‘really phenomenal,’ ‘impressive,’ ‘very strong,’ and ‘really fabulous.’”

15 12. Oracle’s purported cloud “hypergrowth” drove the Company’s stock price from  
16 \$42.79 just before the Class Period to a high of \$52.97 during the Class Period – an increase of  
17 nearly 24%. As *Dow Jones Institutional News* reported, Oracle’s increasing share price was  
18 “credited mostly to [Oracle’s] growing cloud business,” and “left the shares at 17 times adjusted  
19 forward earnings – the highest multiple Oracle has fetched since 2008.”

20 13. Unfortunately for investors, a substantial portion of Oracle’s reported cloud  
21 revenue and growth was artificial. As detailed herein, numerous former senior Oracle cloud sales  
22 executives from across the globe reported that Oracle widely employed two tactics to generate  
23 artificial cloud revenue.

24 14. First, Oracle employed a strategy called “Audit, Bargain, Close.” In order to coerce  
25 cloud-based sales, Oracle would audit an on-premises customer for violations of its on-premises  
26 software license. When it found violations, Oracle would threaten to impose large penalties unless  
27 the customer agreed to purchase a short-term cloud subscription that the customer neither desired  
28 nor intended to use.



1           15.     Second, Oracle employed a tactic known as the “attached deal.” Oracle would offer  
2 the customer a significant discount on the on-premises products that the customer wanted and  
3 needed, provided the customer also “purchased” a short-term cloud subscription – even if the  
4 customer neither wanted nor intended to use the attached cloud product.

5           16.     Oracle’s use of these tactics was so widespread that its employees coined an internal  
6 term for these transactions: “financially engineered deals.” As detailed below, numerous former  
7 Oracle cloud sales executives and employees in multiple locations across the world reported that  
8 the majority of their team’s sales, between 65% and 90%, were achieved using these improper  
9 tactics.

10           17.     Oracle’s use of coercion and “financial engineering” to boost its cloud revenues  
11 was highly misleading to investors. Purported “cloud” revenue generated through these deals was  
12 artificial and unsustainable. Rather than truly purchasing cloud products through these  
13 transactions, as Defendant led investors to believe, customers were simply purchasing a discount  
14 on audit penalties or a discount on the on-premises products that they actually wanted. Although  
15 these transactions were not true sales of cloud products, Oracle nevertheless touted the inflated  
16 “cloud” revenues and growth metrics stemming from these tactics as proof of its seminal  
17 transformation.

18           18.     In late 2017, many of the cloud subscriptions parceled out through these financially  
19 engineered deals began to expire. As would be expected when initial sales are achieved through  
20 coercion, very few of the customers on the receiving end of these engineered deals – “virtually  
21 zero” and “less than 15%” according to knowledgeable witnesses – renewed their cloud  
22 subscription when the initial term expired.

23           19.     Consequently, in December 2017, Oracle was forced to begin disclosing that its  
24 cloud revenues were rapidly decelerating, thus revealing through a series of partial corrective  
25 disclosures that Oracle’s purported cloud transformation was not as represented. As detailed  
26 herein, between December 14, 2017 and March 19, 2018, Oracle was forced to disclose that its  
27 cloud revenue growth rate had fallen precipitously, declining from 58% to just 32% – which was  
28 far below the growth rates that its competitors were reporting.

1           20.     Market participants connected Oracle’s weak cloud growth to its improper sales  
2 practices. For example, analysts reported that Oracle’s cloud business was facing “fundamental  
3 challenges” stemming from its “auditing mentality.” *Forbes* published an article entitled  
4 “Oracle’s Strong Arm Cloud Tactics – the 2018 Model,” in which it reported that Oracle had used  
5 an “‘Audit Bargain Close’ playbook ... to pressure customers into cloud adoption.” *Forbes* asked  
6 whether Oracle would reveal how much of its purported cloud success was real, and how much  
7 was artificial, writing: “[The Audit Bargain Close tactic] does lead to more sales in the cloud  
8 category, which is just what Oracle wants. But it leads to questions that should be disturbing to  
9 Oracle customers and possibly to Oracle employees and investors: Has Oracle shifted its core  
10 competency from creating technology products to running an enterprise sales staff that is expert in  
11 squeezing customers? Is Oracle’s cloud technology less important to its revenues than its cloud  
12 promotion practices? Will Oracle ever reveal how much of its cloud sales are actually shelfware?”

13           21.     As a result of these disclosures, the market started to recognize that Oracle’s cloud  
14 growth was not genuine or sustainable, and Oracle’s stock price fell from approximately \$50 per  
15 share to approximately \$46 per share, a decline of nearly 10%.

16           22.     Rather than level with investors, Oracle attempted to shield its flagging cloud  
17 revenues from public view. On June 19, 2018, the last day of the Class Period, Oracle shocked the  
18 market by announcing that it would no longer separately report financial results for its cloud  
19 business. Under pressure from analysts on a conference call that day, Defendant Catz was forced  
20 to disclose that total cloud revenue growth for the quarter had come in at ja fraction of the growth  
21 rates reported by the Company’s competitors. This news demonstrated that Oracle’s cloud business  
22 had slowed to crawl, and made clear the impetus behind the Company’s desire to hide its cloud  
23 results. Moreover, in another departure from its past disclosure practice, Oracle declined to  
24 provide separate guidance for cloud revenues going forward, further signaling a significant  
25 deceleration in its cloud business.

26           23.     Oracle’s decision to shield its cloud results from public view indicated that the  
27 Company had something to hide. In a June 20, 2018 report, William Blair analysts concluded that  
28 Oracle’s maneuver was “an attempt to *pull the proverbial wool over investors’ eyes—particularly*

1 *related to cloud sales.*” RBC analysts reported that Oracle’s move was a “[r]adical change in  
2 disclosure,” while Oppenheimer analysts reported that the change was “a red flag” that “masks  
3 visibility and raises concerns about the performance and trajectory of the cloud business.”

4 24. In the wake of these disclosures, market observers fully realized that Oracle’s  
5 plummeting cloud growth reflected the coercive sales tactics described herein. For instance, in an  
6 article entitled “What Oracle Doesn’t Want You to Know,” *The Upper Edge* reported that Oracle’s  
7 “Cloud Deals [were] Manufactured by Duress” using the Audit, Bargain, Close and “attached deal”  
8 tactics.

9 25. As a result of Oracle’s disclosures, the price of Oracle stock fell approximately  
10 7.5%, from \$46.27 per share on June 19, 2018 to \$42.82 per share on June 20, 2018, wiping out  
11 billions of dollars in shareholder value. Based on the allegations set forth herein, Lead Plaintiff  
12 seeks relief for itself and all other similarly situated Oracle investors for violations of Sections  
13 10(b), 20(a) and 20A of the Exchange Act.

## 14 **II. JURISDICTION AND VENUE**

15 26. The claims asserted herein arise under Sections 10(b), 20(a), and 20A of the  
16 Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), 78t-1, and Rule 10b-5 promulgated thereunder by the  
17 SEC, 17 C.F.R. § 240.10b-5. This Court has jurisdiction over the subject matter of this action  
18 pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act, 15 U.S.C. §78aa.

19 27. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28  
20 U.S.C. 1391 (b). Oracle maintains its corporate headquarters in Redwood City, California, which  
21 is situated in this District, conducts substantial business in this District, and many of the acts and  
22 conduct that constitute the violations of law complained of herein, including the preparation and  
23 dissemination to the public of materially false and misleading information, occurred in this  
24 District. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly,  
25 used the means and instrumentalities of interstate commerce, including, but not limited to, the  
26 mails, interstate telephone communications, and the facilities of the national securities markets.

1 **III. PARTIES**

2 **A. Lead Plaintiff**

3 28. Lead Plaintiff Union Asset Management Holding AG is the parent holding  
4 company of the Union Investment Group. The Union Investment Group, based in Frankfurt-am-  
5 Main, Germany, was founded in 1956, and is one of Germany's leading asset managers for retail  
6 and institutional clients with approximately \$395 billion in assets as of October 9, 2018. As set  
7 forth in the certification filed with this Court (ECF No. 17-4), certain Union funds purchased  
8 Oracle common stock during the Class Period and were damaged by Defendants' conduct alleged  
9 herein.

10 **B. Defendants**

11 29. Defendant Oracle is a technology company. Incorporated in Delaware, the  
12 Company maintains its corporate headquarters at 500 Oracle Parkway, Redwood City, California.  
13 Oracle stock trades on the New York Stock Exchange, which is an efficient market, under ticker  
14 symbol "ORCL." As of December 14, 2018, Oracle had approximately 3.59 billion shares of stock  
15 outstanding, owned by at least hundreds or thousands of investors.

16 30. Defendant Safra A. Catz ("Catz") is, and was at all relevant times, co-Chief  
17 Executive Officer of Oracle, as well as a member of the Company's Board of Directors.  
18 Previously, Catz served as the Company's President from January 2004 to September 2014; Chief  
19 Financial Officer from April 2011 to September 2014 and November 2005 to September 2008; and  
20 interim Chief Financial officer from April 2005 to July 2005. Prior to being named President, Catz  
21 held various other positions at Oracle since 1999. During the Class Period, Catz signed and  
22 certified each of the Company's quarterly and annual SEC filings, attesting to their purported  
23 accuracy. Catz also regularly spoke to investors about Oracle's business and cloud growth,  
24 professing to be knowledgeable about these matters. In September 2014, Ellison described Catz  
25 as "[v]ery details-oriented," "the No. 2 person for some time," and "our first-ever, de facto chief  
26 operating officer."<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> Chronical Staff, "On The Record: Larry Ellison," *San Francisco Chronical* (September 18, 2014).

1           31. Defendant Mark Hurd (“Hurd”) is, and was at all relevant times, co-Chief  
2 Executive Officer of Oracle, as well as a member of the Company’s Board of Directors.  
3 Previously, he served as the Company’s Co-President from September 2010 to September 2014.  
4 As stated on Oracle’s website, Hurd “manages corporate direction and strategy at Oracle,  
5 facilitating company activity in consulting, sales, marketing, alliances and channels, and support.”  
6 Hurd’s personal webpage profile states that he “helped shift the long-term strategy of the company  
7 toward the cloud.” During the Class Period, Hurd signed and certified each of the Company’s  
8 quarterly and annual SEC filings, attesting to their purported accuracy. Hurd also regularly spoke  
9 to investors about Oracle’s business and cloud growth, professing to have detailed knowledge of  
10 those matters. Hurd has publicly touted how he “stay[s] close to the action,”<sup>2</sup> earning him the  
11 description as an executive that “digs into details and is a hands on manager that examines every  
12 alternative.”<sup>3</sup>

13           32. Defendant Lawrence J. Ellison (“Ellison”) is, and was at all relevant times, Oracle’s  
14 Chief Technology Officer, as well as the Chairman of the Company’s Board of Directors. Ellison  
15 co-founded Oracle in 1977, was its CEO until 2014, and served as the Company’s Chairman of  
16 the Board of Directors from May 1995 to January 2004. The Company’s proxy statements state  
17 that Ellison “continues to lead and oversee our product engineering, technology development and  
18 strategy” and his “familiarity with and knowledge of [Oracle’s] technologies and product offerings  
19 are unmatched.” Catz stated that Defendant Ellison “led the transformation to the cloud,” and is  
20 still “in charge” at Oracle even after becoming the Company’s Chief Technology Officer in 2014,  
21 noting “don’t let titles fool you.”<sup>4</sup> During the Class Period, Ellison regularly spoke to investors  
22 about Oracle’s business and cloud growth, professing to have detailed knowledge of these subjects.

23           33. Defendant Thomas Kurian (“Kurian”) served as Oracle’s President, Product  
24 Development from January 2015 to September 2018. Kurian started working at Oracle in 1996,

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25  
26 <sup>2</sup> Barb Darrow, “So, huge changes at Oracle with Ellison stepping down right? Wrong!” *Gigaom*,  
(September 18, 2014).

27 <sup>3</sup> Paul R. La Monica, “HP’s Hurd mentality,” *CNN Money* (March 29, 2005).

28 <sup>4</sup> <https://www.youtube.com/watch?v=rh0denX3Bks>

1 holding various product management and development positions. Beginning in 2008, Kurian  
2 reported directly to Ellison. According to his personal webpage profile, Kurian was responsible  
3 for “[l]ead[ing] [the] transformation of Oracle’s products with [the] introduction of [a] leading  
4 suite of Cloud Services over 10 years.” Kurian also spoke to investors about Oracle’s business  
5 and cloud growth, professing to know what he was speaking about. Kurian’s colleagues described  
6 him as a hands-on manager, stating that he “likes to get involved in the minutia of various projects”  
7 and “does not sufficiently delegate responsibility.”<sup>5</sup> On September 5, 2018, Oracle announced  
8 that Defendant Kurian was taking a voluntary “leave of absence,” after which he resigned from  
9 the Company.

10 34. Defendant Ken Bond (“Bond”) is, and was at all relevant times, Oracle’s Senior  
11 Vice President of Investor Relations. Bond has served in this role since 2009. During the Class  
12 Period, Bond regularly spoke to investors about Oracle’s business and the sources of its cloud  
13 revenues, professing to be a reliable source of information. As Bond assured investors in  
14 November 2017, “I’ve been doing this for a quite a while in Tech for a very long time,” after being  
15 “I think here at Oracle 8, 9 years now.”<sup>6</sup>

16 35. Defendant Steve Miranda (“Miranda”) is, and was at all relevant times, Oracle’s  
17 Executive Vice President, Oracle Applications Product Development. As stated on Oracle’s public  
18 website, Defendant Miranda is “responsible for leading all aspects of product strategy, product  
19 development, and product delivery for the entire portfolio of Oracle Applications.” Oracle’s  
20 website further states that “Miranda’s primary focus is on delivering the industry’s most complete,  
21 proven, and innovative set of cloud solutions.” Miranda has been with the Company since 1992,  
22 holding a variety of leadership positions within the development organization. During the Class  
23 Period, Miranda spoke to investors about Oracle’s business and cloud growth, professing to be a  
24 reliable source of information.

25  
26  
27 <sup>5</sup> Nadia Damouni, “Ellison’s backing helps Kurian’s star to rise at Oracle,” *Reuters* (January 11,  
2015).

28 <sup>6</sup> Oracle Corp. at RBC Capital Markets TIMT Conference, November 8, 2017.

1 36. Defendants Catz, Hurd, Ellison, Kurian, Bond, and Miranda are collectively  
2 referred to herein as the “Executive Defendants.”

3 **IV. FORMER ORACLE EMPLOYEES WHO SUBSTANTIATE THE ALLEGATIONS**

4 37. The former Oracle employees cited throughout include the following:

5 a. FE 1, a Regional Sales Director for Middle East and Africa at Oracle  
6 from February 2009 to March 2018. FE 1 reported to Abdulrahman Aldossary,  
7 Senior Vice President of Oracle Middle East & Africa, who reported to Alfonso Di  
8 Lanni, Senior Vice President of Sales at Oracle. Di Lanni reported to Loid Le  
9 Guisquet, Executive Vice President of EMEA (Europe, Middle East, and Africa)  
10 and Le Guisquet reported to Defendant Hurd. As part of FE 1’s job responsibilities,  
11 FE 1 sold cloud and other Oracle products to customers and attended meetings at  
12 which cloud sales were discussed. Oracle presented FE 1 numerous awards for his  
13 sales leadership.<sup>7</sup>

14 b. FE 2, a former Vice President in North America cloud sales, from  
15 September 2015 to December 2018. As set forth more fully below, FE 2 spoke  
16 with customers and sales personnel about sales of Oracle cloud products, and saw  
17 draft presentations prepared for Defendant Hurd.

18 c. FE 3, a Senior Technology & Cloud Sales Consultant from 2012 to  
19 March 2017, who was responsible for supporting all of Oracle’s Southern  
20 California cloud sales. FE 3 facilitated sales of Oracle products, including cloud,  
21 and attending meetings concerning cloud sales. FE 3 reported to a Vice President  
22 of Sales, who reported to Rich Geraffo, Executive Vice President of North America  
23 Technology, who reported to Defendant Hurd.

24 d. FE 4, Vice President of Global Sales Engineering, who served as  
25 General Manager of Sales Engineering in 2015. FE 4 sold the first iterations of  
26

27 <sup>7</sup> For ease of comprehension and readability, the Complaint uses the pronoun ‘he’ and possessive  
28 ‘his’ in connection with the Former Employees. However, this convention is not meant to identify  
the actual gender of any of the Former Employees.



1 Oracle's cloud product. FE 4 reported to Defendant Miranda, who reported to  
2 Defendant Kurian.

3 e. FE 5, a Director of Cloud Customer Success at Oracle from 2016 to  
4 October 2018, who led the team responsible for cloud customer success and  
5 renewal for ERP, EPM and SCM product suites and would reach out to customers  
6 to check on the accounts. FE 5 reviewed documents and information reflecting  
7 customer renewal rates and attended meetings discussing these rates and the  
8 percentage of customers that were "Dead on Arrival" or "DOA." FE 5 reported to  
9 the Senior Director of Customer Success, Doug Rhoades.

10 f. FE 6, a Channel Sales Representative from October 2010 to January  
11 2018, who worked with authorized resellers to engineer deals with customers in the  
12 Northeast Region.

13 g. FE 7, a Regional Technology Sales Director at Oracle from  
14 February 2013 to October 2018, who was responsible for Oracle's cloud business  
15 in the Czech Republic, Hungary, and Slovakia. FE 7 reported to Natalie Korhonen,  
16 who, in turn reported to Giovanna Sangiorgi, EMEA Vice President of Sales,  
17 Oracle. Sangiorgi reported to Le Guisquet, who, as above, reported to Hurd.

18 h. FE 8, a Cloud Platform Sales Manager at Oracle from March 2013  
19 to July 2018, who managed a North America cloud sales team.

20 i. FE 9, a Director of Cloud Customer Success and Customer  
21 Experience at Oracle from 2016 to 2018, whose team was responsible for customer  
22 adoption and expansion of cloud. FE 9 reviewed documents and information  
23 reflecting customer renewal rates and attended meetings discussing these rates and  
24 the percentage of customers that were "Dead on Arrival" or "DOA." FE 9 reported  
25 to the Senior Director of Customer Success, Doug Rhoades.



1 **V. SUMMARY OF THE FRAUD**

2 **A. Oracle Belatedly Pivots From Its Stagnating Legacy “On-Premises”**  
3 **Business To Focus On The Growing “Cloud” Market**

4 38. For years, Oracle was a leader in the development and marketing of database  
5 software and technology. Oracle achieved its past success by selling licenses for Oracle’s “on-  
6 premises” database software and products. “On-premises” software – in contrast with “cloud-  
7 based” software, discussed immediately below, is installed locally, on a licensee’s own computer  
8 and maintained on the user’s own infrastructure and platforms. Through its sale of on-premises  
9 products, Oracle became one of the most successful database technology and software companies  
10 in the world.

11 39. Over the last decade, however, numerous competitors introduced database software  
12 options that threatened to strip market share away from Oracle. Unlike Oracle, each of these  
13 competitors’ new products were “cloud-based.” In contrast with “on-premises” software, “cloud-  
14 based” software allows licensees to store and access data over the internet. Cloud-based products  
15 have certain attractive features, including that its users do not need to build and maintain expensive  
16 “on-premises” infrastructure and platforms.

17 40. In 2006, Amazon introduced its cloud-based software, Amazon Web Service, with  
18 analysts applauding that “Amazon was one of the first companies to launch a [cloud] product for  
19 the general public, and it continues to have one of the most sophisticated and elaborate set of  
20 options.”<sup>8</sup> Then, in 2008, Google followed suit and released Google Cloud Platform, which led  
21 market commentators to proclaim that Google had instantly “become a player in the enterprise”  
22 space.<sup>9</sup> Finally, in 2010, Microsoft unveiled Azure, which *Forbes* heralded as providing “an  
23 attractive migration path for existing Windows applications for customers who want the economic  
24 or functional benefits of moving to Microsoft-hosted cloud servers.”<sup>10</sup>

25 \_\_\_\_\_  
26 <sup>8</sup> Peter Wayner, “Cloud versus cloud: A guided tour of Amazon, Google, AppNexus, and GoGrid,”  
*InfoWorld* (July 21, 2008).

27 <sup>9</sup> Jon Brodtkin, “10 cloud computing companies to watch,” *NetworkWorld* (May 18, 2009).

28 <sup>10</sup> “In Pictures: 10 Cloud Computing Leaders,” *Forbes* (June 4, 2010).

1           41. While Oracle’s competitors were developing cloud-based software products to  
2 satisfy growing demand and snatch up market share, Oracle was stubbornly refusing to  
3 acknowledge that customers were increasingly shifting towards cloud technology.

4           42. Even though the cloud model posed such an existential threat to Oracle’s core  
5 business, Oracle’s leadership, particularly Defendant Ellison, Oracle’s co-founder, Chairman, and  
6 Chief Technology Officer, publicly ridiculed the new technology. For instance, at a September  
7 2008 OpenWorld Conference, Oracle’s annual business and technology conference, Ellison called  
8 cloud computing “complete gibberish” and wondered aloud when this “idiocy [was] going to  
9 stop.” Again, in October 2009, Ellison referred to cloud-based software as “water vapor” and  
10 “nonsense.”<sup>11</sup>

11           43. Despite Oracle and Ellison misconstruing its significance, cloud-based technology  
12 became the focus of the computing industry, with an importance that could not long be ignored.  
13 For example, an October 17, 2009 *Economist* article noted that “the rise of cloud computing is ...  
14 changing the nature of competition within the computer industry.” In a November 11, 2010 white  
15 paper, Microsoft’s chief strategist Rolf Harms observed that “[c]omputing is undergoing a seismic  
16 shift from client/server to the cloud, a shift similar in importance and impact to the transition from  
17 mainframe to client/server.”<sup>12</sup> Likewise, *Forbes* recognized in a September 27, 2011 article that  
18 cloud-based software was the “ultimate disruptive innovation” and “spell[ed] very big trouble for  
19 the traditional enterprise software leaders who plainly know they need to make the leap, but don’t  
20 have the business models, DNA, or dire necessity to support the change today.”<sup>13</sup>

21           44. Oracle’s competitors quickly began to reap the benefits of their investments in  
22 cloud-based infrastructure and generate substantial revenues from these products. By 2015,  
23 Amazon reported \$2 billion each quarter in revenue and dramatic year-over-year growth of 70-  
24 80% from its cloud-based software. Likewise, by the start of the Class Period, Google reported

25 \_\_\_\_\_  
26 <sup>11</sup> Robin Wauters, “Oracle’s Larry Ellison Rips into Cloud Computing ‘Nonsense,’” *Seeking*  
*Alpha* (October 1, 2009).

27 <sup>12</sup> Rolf Harms and Michael Yarmartino, “The Economics of the Cloud” (Nov. 11, 2010).

28 <sup>13</sup> Aaron Levie, “Is the cloud the ultimate disruptive innovation,” *Forbes* (Sep. 27, 2011)

1 substantial cloud revenue each quarter and a growth rate in excess of 80%. Similarly, by the start  
2 of the Class Period, Microsoft reported billions in revenue each quarter and a growth rate of 93%  
3 for its cloud-based product, Azure.

4 45. Having bet the wrong way on the industry's future, Oracle was soon forced to  
5 decide between becoming a declining on-premises company or reshaping itself as a cloud-based  
6 business with prospects for significant growth. *Fortune* correctly framed the issue: "What do you  
7 do when you are the best company in your industry but your industry is mired in a slump of  
8 mediocre performance? That's the dilemma faced by Oracle," adding that the "meaty revenue pie  
9 that is the enterprise-tech market... is shrinking slowly" due to cloud competition.<sup>14</sup> Industry-  
10 watchers referred to Oracle's situation as an "innovator's dilemma," which "describes how  
11 successful companies that fail to adopt new technology or business models to meet customers'  
12 future needs can quickly fall behind," noting that Oracle was "reluctant to make any wholesale  
13 shift away from the on-premises model."<sup>15</sup> Analysts believed the Company needed "an even more  
14 radical and rapid organizational and cultural shift to 'cloud-first,'" rather than holding onto its  
15 legacy businesses during the industry's shift to the cloud.<sup>16</sup>

16 46. Eventually, even Defendant Ellison could no longer deny that Oracle would need  
17 to develop its own competitive cloud-based technology. Oracle, however, failed to grasp the  
18 urgency of the situation, with Ellison stating in an October 2, 2012 CNBC interview that such  
19 technology would be developed over the "next couple of years." In response, analysts noted at the  
20 time that Oracle was "[c]ertainly" not as "cloud-based" as its competitors in the industry and that  
21 its approach to cloud-based technology was "not all quite there yet."<sup>17</sup> Market commentators  
22  
23

24 \_\_\_\_\_  
<sup>14</sup> Kevin Kelleher, "What kind of problem does Oracle have exactly?" *Fortune* (June 28, 2013).

25 <sup>15</sup> Jessica Twentyman, "Oracle and SAP are Big Software, but for how long?" *The Register* (May  
26 13, 2013).

27 <sup>16</sup> John Freeman et al., "The Death Of The Commercial Database: Oracle's Dilemma," *Seeking  
Alpha* (February 10, 2017).

28 <sup>17</sup> Josh Bersin, "Oracle Transformed – It's Now All about the Cloud," *Forbes* (October, 3 2012).

1 further stated in May 2013 that “Ellison has been talking big about cloud lately,” but that “Oracle,  
2 shockingly, appears to be failing” in implementing a cloud strategy.<sup>18</sup>

3 47. Without a competitive cloud-based product offering, Oracle’s revenue growth  
4 suffered. In June 2013, Oracle reported software sales that fell short of analyst expectations.<sup>19</sup> In  
5 September 2015, Oracle announced that revenue for the first quarter fell by nearly 2% and that  
6 new software license sales had declined by 16%, which analysts blamed on Oracle not “moving  
7 fast enough to make up for declines in its traditional software sales.”<sup>20</sup> Then, in May 2016, Oracle  
8 announced that the Company’s annual revenue had fallen 3% for fiscal year 2016 – the first annual  
9 decline since the Company recovered from the tech industry meltdown in 2002.

10 48. Confronted with these poor results, Oracle belatedly pivoted to the cloud in high  
11 gear, announcing that it would refocus its efforts entirely on competing in this rapidly developing  
12 market. In an October 26, 2015 CNBC interview, Hurd affirmed that Oracle now was “determined  
13 to compete on every level of the cloud feature for feature.” Likewise, Catz explained that Oracle  
14 finally was making the “move to cloud,” which would represent “a generational shift in technology  
15 that [wa]s the biggest and most important opportunity in our Company’s history.”<sup>21</sup>

16 49. Oracle’s pivot to the cloud was the single-most important issue impacting the  
17 Company, with the market keenly focused on its shift to this new technology and ability to open  
18 up a growing revenue stream. For example, *USA Today* stated that “Oracle’s future and relevance  
19 is pinned on its ability to become a bigger player in cloud,” noting that even small improvements  
20 in cloud sales “were enough ... to pop the company’s stock.”<sup>22</sup> Market commentators noted that  
21 the “cloud has become a matter of existential importance to Oracle as its legacy business of selling  
22

23 \_\_\_\_\_  
24 <sup>18</sup> Brad Peters, “The Worst (And Best) Enterprise Cloud Strategies,” *Forbes* (May 21, 2013).

25 <sup>19</sup> Oracle’s fiscal year ends May 31 of each calendar year.

26 <sup>20</sup> Abhirup Roy, “Oracle Unveils Mixed Fiscal 1Q Earnings Results,” *FoxBusiness* (September 16,  
2015).

27 <sup>21</sup> Oracle Corp., Third Quarter 2016 Earnings Call, March 15, 2016.

28 <sup>22</sup> John Swartz, “Oracle’s Mark Hurd builds a cloud arsenal to take on Amazon,” *USA Today* (April  
26, 2017).

1 software licenses and hardware products erodes in the face of a growing enterprise preference for  
2 usage-based application and infrastructure subscriptions.”<sup>23</sup>

3 50. Oracle leadership’s slowness to acknowledge the growing importance of cloud,  
4 however, had caused the Company to fall far behind in this critical market. As analysts explained  
5 at the time, “[t]he rise of cloud computing ... caught the software giant [Oracle] somewhat flat-  
6 footed, leaving the firm in scramble mode as it races its peers to the cloud.” Indeed, as of  
7 September 2016, Amazon’s cloud computing revenue dwarfed that of Oracle, with Oracle’s cloud  
8 infrastructure business bringing in just \$171 million in quarterly sales compared to Amazon’s  
9 \$2.89 billion. In addition, Oracle faced tough competition from smaller cloud specialists,  
10 including Salesforce.com, with analysts noting that Oracle was also “at risk from smaller and faster  
11 cloud services specialists.”<sup>24</sup> Analysts explained that it would take Oracle a long time to catch up  
12 with its cloud competitors, with one Deutsche Bank analyst writing in a September 2016 report  
13 that “Oracle talked up its ‘next-gen’ infrastructure as a cheaper rival to [Amazon’s cloud product],  
14 but we don’t believe it will be competitive anytime soon.”

15 **B. As Oracle Begins to Ramp Its Cloud Business, It Denies Rumors That It**  
16 **Generates Cloud Revenue Through Improper Sales Tactics**

17 51. As a late entrant in the cloud software market, Oracle faced a considerable  
18 challenge. It not only needed to develop a cloud product with competitive capabilities, but it also  
19 needed to develop an effective sales and marketing strategy for its nascent cloud product.

20 52. From the outset of Oracle’s cloud efforts, market watchers cautioned the  
21 Company’s senior management not to play “catch up” by employing improper sales tactics to  
22 generate cloud revenues. In particular, market participants voiced early concerns that Oracle and  
23 its auditing department should not attempt to extract artificial “cloud” revenues through their audits  
24 of its licensees’ “on-premises” software licenses.

25 \_\_\_\_\_  
26 <sup>23</sup> Kurt Marko, “Oracle Cloud World epiphany: Focusing on applications and data, not  
infrastructure. Yet.” *diginomica* (January 24, 2017).

27 <sup>24</sup> Manikandan Raman, “Oracle Corporation Is At Risk From Competitors Like Salesforce,”  
28 *Benzinga* (September 19, 2016).

1           53. By way of background, Oracle’s software license contracts gave it the right to audit  
2 its customers’ compliance with the license and impose fees if it found violations. Oracle’s License  
3 Management Services (“LMS”) is a division within Oracle that is tasked with conducting audits  
4 of Oracle’s on-premises licensees. LMS is, according to the Company’s website, the “established  
5 authority on Oracle licensing policy.” The stated purpose of LMS’s audits was to determine  
6 whether Oracle’s licensees were using Oracle’s software in accordance with the terms of the  
7 Company’s on-premises license and, if not, issue a penalty for such non-compliance. According  
8 to Oracle’s public statements, LMS purportedly provided “Oracle customers with an open,  
9 transparent, and definitive assessment of their compliance position.” Oracle’s LMS auditors  
10 supposedly maintained a “customer-first approach,” with their audits limited to “validate the  
11 effectiveness of [the customer’s] internal controls, and through them, to maintain a compliant  
12 position.”

13           54. Beginning in 2014, certain industry participants expressed concern that Oracle may  
14 attempt to misuse LMS “audits” to push Oracle’s cloud product on its existing on-premises  
15 customers base – which provided a potential and rich revenue opportunity for Oracle’s nascent  
16 cloud business. These industry participants included Clear Licensing Counsel, a prominent and  
17 independent European organization that advocates for the interests of software consumers.

18           55. As part of its investigation, Lead Counsel spoke with the Founder and Chairperson  
19 of Clear Licensing Counsel, Martin Thompson. In addition to his role as the head of Clear  
20 Licensing Counsel, Mr. Thompson is also a prominent author on software licensing issues and the  
21 owner and founder of The ITAM Review, a global resource for ITAM, SAM and Licensing  
22 professionals.

23           56. Mr. Thompson described how, on May 7, 2014, he participated in a scheduled two-  
24 hour meeting with Oracle representatives in Oracle’s Thames Valley Park offices in Reading,  
25 United Kingdom. The meeting was attended by, among others, Debbie Wynne-Owen, Oracle’s  
26 Senior Director of Global Operations within LMS. During the meeting, Clear Licensing  
27 highlighted to Oracle’s executives that customers believed that the Company’s auditing group,  
28 LMS, engaged in “questionable sales tactics,” with “LMS activity leading to sales engagement.”

1 These findings were based on a survey conducted by Clear Licensing Counsel of 100 organizations  
2 located across the globe, including from the United States (29% of respondents), Europe (56% of  
3 respondents), Asia (9% of respondents) and Oceania (6% of respondents). Clear Licensing’s  
4 findings were also corroborated by accounts provided during a roundtable session held on March  
5 26, 2014 at the Home Office, UK Government, which included representatives of 15-20 major  
6 Oracle “on-premise” customers, including from both the public and private sector and some of the  
7 largest companies in the world. Following the meeting, in mid-October 2014, Mr. Thompson sent  
8 Oracle’s Senior Director of Global Operations a written report documenting Clear Licensing  
9 Counsel’s findings and provided Oracle’s executives with an opportunity to respond.

10 57. Having received no meaningful response from Oracle to its report, Clear Licensing  
11 Counsel then sent a letter on January 6, 2015 to Defendant Ellison and Oracle’s Board of Directors,  
12 including Defendants Hurd and Catz. In that letter, Clear Licensing Counsel and Mr. Thompson  
13 specifically cautioned Defendants Ellison, Hurd and Catz that they needed “to take steps to  
14 improve the trust of your customers ... if you wish to succeed in migrating them to your cloud  
15 computing services.”

16 58. Clear Licensing Counsel’s letter warned Oracle’s executives that, based on its  
17 comprehensive survey and analysis, there was a “deep-rooted mistrust of [Oracle’s] core customer  
18 base as a result of your auditing and licensing practices.” According to the survey results, Oracle’s  
19 audits were “often unclear and difficult to respond to” and its licensing terms and changes were  
20 “poorly communicated,” with 92% of Oracle’s on-premises customers expressing that Oracle did  
21 not clearly communicate changes to its licensing. Customers wondered whether potential  
22 violations of license agreements were just a pretext to generate cloud revenues. Clear Licensing  
23 Counsel cautioned Defendants that, “if Oracle does not address these concerns then the company’s  
24 ability to meet its stated \$1 billion cloud sales target next year, together with the longer-term  
25 outlook for its cloud computing business, will remain in doubt.” The letter further stated that one  
26 of the “key issues” Clear Licensing Counsel identified in its November 2014 report was that  
27 “*Oracle routinely moves the licensing goals posts to favour revenue streams over customer*  
28 *requirements.*” The letter concluded by stating that “for the sake of the company’s long-term



1 future and the success of its cloud computing services, we urge you to review these  
2 recommendations that have been validated by your customers.”

3 59. Clear Licensing Counsel’s letter to Defendants Ellison, Hurd, Catz, and Oracle’s  
4 Board of Directors was publicly released on or about January 6, 2015. Following the letter’s  
5 release, various media outlets and commentators published follow-up articles and reports about  
6 Clear Licensing Counsel’s documented concerns. As one commentator explained in a report titled  
7 “Oracle Faces Withering Criticism of Its Licensing Practice,” Clear Licensing Counsel’s letter  
8 “received substantial attention in software-licensing circles” during the ensuing months after its  
9 publication.<sup>25</sup> Indeed, numerous media outlets published articles and reports about Clear  
10 Licensing Counsel’s “scathing report” and letter to Defendants Ellison, Catz, Hurd, and Oracle’s  
11 Board, “predict[ing] that Oracle will struggle to move to the cloud unless it changes its ways.”<sup>26</sup>

12 60. Months later, the financial press published additional reports questioning whether  
13 Oracle was misusing its “audit” process to manufacture artificial cloud sales – precisely as Clear  
14 Licensing Counsel feared. For example, on June 18, 2015, *Forbes* published an article titled “Is  
15 Oracle Using Legal Pressure To Increase Cloud Sales?” In that article, *Forbes* pointed to accounts  
16 suggesting that Oracle was “indeed increasing the pressure on existing clients” through its  
17 “audits,” but that the impact that “these new practices have on boosting Oracle’s cloud earnings  
18 and possibly alienating its existing customer base is not easy to discern.”

19 61. Five days later, on June 23, 2015, *CRN* published a report titled “Here’s Why Some  
20 Partners Think Oracle Cloud Sales Numbers Are Misleading.”<sup>27</sup> *CRN* explained that “Oracle says  
21 its cloud business is growing at a pace that will soon catapult it to the top of the heap in the  
22 enterprise software space, but some of its partners think it’s just bombast.” *CRN* referred to three  
23 unnamed Oracle customers, who claimed that Oracle salespeople were attempting to sell customers  
24 “cloud products they don’t need,” including by urging the customer into “buying cloud as a way

25 <sup>25</sup> [https://scottandscottllp.com/oracle\\_faces\\_withering\\_criticism/](https://scottandscottllp.com/oracle_faces_withering_criticism/)

26 <sup>26</sup> <https://www.informationweek.com/software/enterprise-applications/oracle-must-reform-says-software-licensing-group/d/d-id/1318492>

27 <sup>27</sup> *CRN* is a top technology news and information source for solution providers, IT channel  
28 partners, and value-added resellers (VARs).



1 to reduce their support renewal [for on-premises product], not necessarily because they want to  
2 use Oracle cloud products.” For these reasons, according to one of CRN’s unidentified sources,  
3 “Oracle’s cloud numbers [reported to investors] are definitely misleading.”

4 62. Oracle denied the accusations contained in *CRN*’s and the related reports. As  
5 discussed in the same *CRN* article, Oracle publicly assured investors that the allegations that Oracle  
6 customers are buying cloud that they did not want and would not use were “***absolutely not true.***”

7 63. Over the next several months, additional media outlets published reports that  
8 continued to question the legitimacy of Oracle’s sales practices for its nascent cloud product. For  
9 example, on September 11, 2015, *Business Insider* published an article titled “‘I Felt Like We Were  
10 Being Extorted’: Customer Says Oracle Tried To Strong-Arm Him Into a Cloud Sale.” In that  
11 report, *Business Insider* explained how, according to one unidentified source, Oracle had “used  
12 some ugly tactics to sell its cloud and other products the customer didn’t want.” The report accused  
13 Oracle of threatening its customers with an “audit” of their on-premises license and then, to make  
14 “the threat go away,” telling those customers that they could “buy credits for cloud services” that  
15 they did not otherwise want or intend to use.

16 64. Oracle again minimized these allegations and denied that they had merit. On  
17 January 14, 2016, the Senior Vice President of Oracle (UK), Dermot O’Kelly, publicly responded  
18 on behalf of Oracle to the “[r]eports last year [that] claimed that Oracle sales reps have used  
19 aggressive tactics to convince customers to move to the cloud through methods like tough software  
20 audits.” In his response, Oracle’s Senior Vice President “insisted Oracle wants companies to move  
21 at their own pace to the cloud.” In denying the accusations, he publicly stated, in remarks  
22 published by *Cloud Pro* that “***it would be wrong to force a company to do something that’s***  
23 ***against their will.***”

24 65. Six months later, Oracle again assured industry and securities market observers that  
25 its cloud revenues were legitimate. On July 21, 2016, Pacific Square Research published a report  
26 summarizing “a number of stories in the press, such as [the] one from Business Insider,” discussed  
27 above at paragraph 63, which asserted that Oracle “used some ugly tactics to sell its cloud and  
28 other products the customer didn’t want,” including the “nuclear option” of “audits” to “boost

1 cloud.” Oracle denied these allegations. The Pacific Square Research report quoted an Oracle  
2 spokesperson (i.e., Defendant Bond) as stating that these allegations were fictitious “*conspiracy*  
3 *rumor*” that did not even warrant a substantive response, explaining:

4         Responding to *every rumor* is never a productive endeavor.... Only color I can add  
5 is that if the *conspiracy rumor* were true, people would not use the cloud credit and  
6 there would be no renewal or revenue growth as a new business would replace  
cancelled business – not at all what we’re expecting.

7         66. Unknown to investors at the time, the accusations that Oracle deflected and  
8 rebuffed as “conspiracy rumor” were, in fact, not “conspiracy rumor” at all. As discussed further  
9 below, Oracle widely engaged in the very practices that its executives publicly shunned, and the  
10 “revenue growth” that Oracle’s executives trumpeted each quarter as proof of Oracle’s success  
11 was, in significant part, the artificial product of their coercive audits and unsustainable sales  
12 practices.

13         **C. Throughout The Class Period, Defendants Report Astonishing Growth In**  
14         **Oracle’s Cloud Business, Which They Attribute To Oracle’s Supposedly**  
15         **Superior Cloud Products and Business Practices**

16         67. While denying that its cloud revenue was driven by abusive sales practices, Oracle  
17 reported dramatic growth in its cloud business throughout the Class Period. Further rebutting any  
18 charge that coercive tactics were driving its cloud revenue, Oracle attributed its ostensible success  
19 to legitimate business factors, thus assuring investors that its revenue growth was genuine and  
20 sustainable.

21         68. For instance, on March 15, 2017, the first day of the Class Period, Oracle issued its  
22 earnings release for the third quarter of 2017, touting that cloud billings had jumped 110% year-  
23 over-year (versus 39% year-over-year growth the prior quarter) to \$1.2 billion, driving overall  
24 financial results higher. Defendant Catz stated in the release that Oracle was enjoying  
25 “hypergrowth ... in the cloud,” called the Company’s growth rate “astonishing,” and stated that,  
26 “*Our new, large, fast growing, high-margin cloud businesses are driving Oracle’s total revenue*  
27 *and earnings up and improving nearly every important non-GAAP business metric you care to*  
28 *inspect*; total revenue is up, margins are up, operating income is up, net income is up, EPS is up.”

1           69. On Oracle’s third quarter earnings call that same day, Defendants continued to tout  
2 the growth of Oracle’s cloud business. Defendant Hurd stated that Oracle was “*the fastest-*  
3 *growing scale cloud business in the world,*” while Defendant Catz added that “Our pivot to the  
4 cloud is now clearly in full swing.” Defendant Catz emphasized that, for the first time, the growth  
5 in Oracle’s cloud business had overtaken the declines in its legacy “on-premises” business, stating  
6 “*more importantly, the increase in revenue from our cloud business has overtaken new software*  
7 *license declines on an annual basis,*” and adding that, “*This is a significant milestone in our*  
8 *transformation,* where the combination of our cloud and new software license business added  
9 together *are growing.*”

10           70. Analysts responded enthusiastically to Defendants’ statements about Oracle’s  
11 represented cloud growth, calling the results “a material inflection point” and a “key milestone” in  
12 Oracle’s shift to the cloud. For instance, in a March 15, 2017 report issued following Oracle’s  
13 earnings release and conference, Macquarie analysts raised their price target for Oracle shares and  
14 wrote, “Oracle reported a solid third quarter, *one of its best reports in years, even as the*  
15 *[Company] heads towards the tipping point in its cloud transition* when cloud growth and margin  
16 scale are offsetting declines in new license revenues.”

17           71. On March 16, 2017, Barclays raised their Oracle price target, writing, “With the  
18 company emerging on the other side of cloud transition . . . , we continue to like the long-term story.  
19 If the company is starting to show meaningful client wins for its database/IaaS offering (something  
20 management hinted at), we could see *a re-rating of the name.*”<sup>28</sup>

21           72. Meanwhile, Oracle continued to rebuff any suggestion that its cloud revenue was  
22 driven by coercive sales tactics. On May 9, 2017, at a Jefferies Technology Group Investor  
23 Conference, Defendant Bond was asked about the importance of audits as a driver of revenue  
24 growth. An analyst asked if Bond could provide “some sort of indication as to what percentage of  
25 revenue and margin is associated with auditing practices of customers.” In response, Bond stated,  
26 “This is one of those things where – gets talked about a lot. And I think this is one of those things

27 \_\_\_\_\_  
28 <sup>28</sup> “Re-rating” of Oracle refers to an expansion of the stock’s earnings multiple, such that investors  
would be willing to pay more for each dollar of the Company’s earnings.

1 where *the story is a lot bigger than the realities.*” Defendant Bond assured investors that Oracle  
2 used its audits properly, stating that “we try to do [audit] as best we can, in as gracious [a] way as  
3 we can.” Bond also assured investors that cloud revenue was not being generated by audits, stating  
4 that with regard to questions about revenue associated with auditing, “the key, as we go to cloud,  
5 is this conversation is going to go away.”

6 73. As the Class Period progressed, Oracle continued to emphasize its rapid cloud  
7 revenue growth to the investor community. For example, on June 21, 2017, Oracle issued its  
8 earnings release for the fourth quarter of 2017, in which it reported that cloud revenues had surged  
9 again by 58% to \$1.4 billion, pushing up the Company’s earnings per share. Defendant Catz again  
10 underscored that cloud growth was a primary driver of Oracle’s profitability, stating that, “This  
11 cloud hypergrowth is expanding our operating margins.”

12 74. On the conference call with investors and analysts that day, Defendants stated that  
13 Oracle’s cloud business had become the primary driver of Oracle’s growth, with Catz stating that  
14 “[t]he cloud has become our predominant growth vehicle,” and Ellison reiterating that “[o]ur rapid  
15 SaaS growth is the driving force behind Oracle’s revenue and earnings growth in Q4.”<sup>29</sup>

16 75. Defendants also assured investors that the Company’s cloud revenue was high-  
17 quality and sustainable. On the June 21, 2017 conference call, an analyst questioned Defendants  
18 about the quality of Oracle’s reported cloud revenue, and specifically whether the Company’s  
19 cloud growth was sustainable or whether it was a “1-year phenom.” Catz responded by denying  
20 that Oracle’s reported cloud growth was driven by a short-term, “1-year” spike in revenue, but  
21 rather was built on a base of “recurring revenue,” stating “*So this is absolutely not a 1-year*  
22 *phenomena.* In fact, what you should see, as this goes on, is we will have less drag from the  
23 transition and the base will continue to grow. And so this should really accelerate. And understand  
24

25 <sup>29</sup> “SaaS” refers to software-as-service, a business line in which the Company licensed Oracle  
26 cloud-hosted “pre-packaged” software and applications on a subscription basis. In fiscal year  
27 2017, Oracle told investors it was successfully pushing its cloud offerings into two additional  
28 lucrative cloud businesses: platform-as-service (“Paas”), which provides a framework for  
developers to build and deploy customized applications; and infrastructure-as-service (“IaaS”),  
which provides scalable and automated compute resources.

1 that in our PaaS-IaaS business, we're not even at scale. *So as we really scale that up, profitability*  
2 *is going to increase more quickly and revenues will be built on the base of another recurring*  
3 *revenue -- of the recurring revenue business."*

4 76. Investors and analysts relied upon Defendants' assurances about Oracle's  
5 purportedly tremendous cloud growth. For example, on June 22, 2017, *Business Insider* published  
6 an article entitled "*Oracle's blow-out earnings caused over 20 Wall Street analysts to raise price*  
7 *targets.*" The article reported, "*OracleCloud computing really is starting to breathe new life into*  
8 *Oracle.* ... A sunny outlook caused the stock to hit a 52-week high of \$51.85 on Thursday before  
9 settling down to about \$50 in the afternoon."

10 77. Also on June 22, 2017, Macquarie analysts again increased their price target,  
11 writing, "Oracle reported its *best quarter in years* as we believe the company has weathered the  
12 worst of its transition to the cloud .... Critical metrics like cloud ARR, license revenues, total  
13 software revenues, billings, and margins all beat [consensus analyst estimates], making the quarter  
14 *a solid turning point as management rounds the bend on a multiyear rapid cloud transition."*

15 78. In another June 22, 2017 report, William Blair analysts wrote, "At this point, it  
16 appears that *Oracle has crossed the cloud chasm, which will lead to higher sustained revenue*  
17 *growth . . . and double-digit non-GAAP EPS growth."*

18 79. Throughout the Class Period, Defendants continued to assure investors that the  
19 Company's cloud growth was driven by a variety of legitimate business factors and conditions,  
20 such as the quality of Oracle's cloud products and sales force, as well as the value and cost-saving  
21 delivered to consumers. For example, when asked on a September 14, 2017 earnings call about  
22 the reasons for Oracle's "momentum in [the] cloud portfolio," Defendant Hurd responded that the  
23 Company's cloud growth was due to the fact that "[w]e're better – our products are better. Our  
24 sales force is better. Our ability to implement is better. Our ability to do all of these things has just  
25 continued to improve quarter by quarter by quarter, and it manifests itself in the type of results  
26 we're talking about this afternoon."

27 80. Similarly, at a November 7, 2017 Sanford C. Bernstein Technology Innovation  
28 Summit, Defendant Bond was asked about the "the real biggest driver you think of why [clients]

1 would be moving on-premise to [the cloud].” He stated that “from a cost standpoint as well as an  
2 innovation standpoint, there’s a lot to like about cloud for the customer. And *I think this is one of*  
3 *the biggest drivers of why you’re seeing customers really excited about this even if it’s still*  
4 *early.*”

5 81. Buoyed by Defendants’ reported success in the cloud, Oracle’s stock price surged  
6 during the Class Period, rising from \$42.79 on March 14, 2017 to a high of \$52.97 on March 9,  
7 2018 before the truth fully emerged – an increase of nearly 24%.

8 **D. In Reality, Oracle’s Supposedly Explosive Cloud Growth Was Fueled By**  
9 **Extortionate and Coercive Sales Practices**

10 82. Unbeknownst to investors, Oracle’s “astonishing” cloud growth was illusory and  
11 driven by the very practices it denied engaging in: improper and extortionate tactics to coerce  
12 customers to buy short-term cloud subscriptions they did not want and would not renew.

13 83. Specifically, as numerous former Oracle employees, industry insiders, and even a  
14 government investigation have confirmed, Oracle generated a substantial volume of its cloud sales  
15 using a highly improper practice known as “Audit, Bargain, Close” or “ABC.”

16 84. In the typical ABC deal, Oracle’s LMS auditing department would audit an existing  
17 on-premises client for violations of the software license, and present the client with a hefty bill –  
18 say, \$10 million. Oracle sales would then intervene, offering to reduce the penalties significantly  
19 – by, for instance, \$4 million – if the customer purchased \$2 million in cloud subscriptions. These  
20 customers, who neither wanted nor needed the cloud products, “purchased” a cloud subscription  
21 simply to save money on audit penalties, and, of course, almost never renewed those subscriptions.  
22 Oracle misleadingly reported these sham “sales” as cloud revenue, highlighting them as evidence  
23 of explosive business growth, when, in fact, they were nothing of the sort.

24 85. Oracle also sold cloud subscriptions to customers who did not want them, and in  
25 some cases could not even use them, through so-called “attached deals.” In an “attached deal,”  
26 Oracle would offer a customer who was only interested in renewing its “on-premises” services a  
27 sharp discount on those services if the customer agreed to tack on an unwanted one-year cloud  
28 subscription. In many cases, the customer was told that it was receiving a free cloud “trial”

1 subscription on top of a full-price on-premises contract, while Oracle internally booked the deal  
2 as a full-price cloud sale coupled with a discounted on-premises purchase. Thus, Oracle used these  
3 attached deals to disguise legacy on-premises revenue as all-important cloud revenue.

4 86. As discussed more below, these practices were so commonplace within Oracle that  
5 the Company internally nicknamed them “financially engineered” and “Dead On Arrival” deals.

6 **1. Oracle Fuels Its Cloud Growth By Coercing Customers To**  
7 **Subscribe To Cloud Products Under Threat Of Audit Penalties**

8 87. Many of Oracle’s most senior executives during the Class Period confirmed that  
9 the “Audit, Bargain, Close” tactic was a key driver of Oracle’s cloud revenue and the vehicle  
10 through which the overwhelming majority of their teams’ cloud sales were made, including:

11 a. FE 1, Regional Sales Director for Middle East and Africa, who  
12 reported that during the Class Period at least 80% of Middle East and Africa cloud  
13 revenue was generated through engineered deals and that it was “crystal clear these  
[sales] are fake” because “none of these deals are renewed”;

14 b. FE 3, Senior Technology & Cloud Sales Consultant, who was  
15 responsible for supporting Oracle’s Southern California cloud sales, stated that  
16 Oracle relied on the ABC tactic as a key way to “juice the numbers” for its reported  
cloud sales;

17 c. FE 4, Vice President of Global Sale Engineering, who served as  
18 General Manager of Sales Engineering in 2015 selling the first iterations of the  
cloud product, who characterized this practice as a “part of the core [Oracle]  
19 playbook”;

20 d. FE 5, Director of Cloud Customer Success at Oracle from 2016 to  
21 October 2018, who confirmed that customers were forced to purchase cloud  
22 products under threat of audit and that that these customers would be “irate” when  
the customer success team called to ask how they could get them to deploy and  
expand their cloud footprint.

23 88. These former Oracle executives detailed the mechanics of the ABC scheme. To  
24 start, Oracle installed its main on-premises products with extra options and management packs  
25 enabled by default, but did not inform its customers that these features had been installed and must  
26 be disabled in order to avoid license overages. Once a customer fell into this trap, Oracle’s sales  
27 and LMS teams worked in a highly coordinated fashion to audit the client for its license violations  
28 and push cloud products.



1           89.     FE 1 confirmed that the sales teams and LMS closely coordinated to use audits in  
2 order to sell unwanted cloud subscriptions. FE 1 also stated that sales would direct LMS to target  
3 clients for audit. In particular, FE 1 stated that the sales team would “identify large clients they  
4 thought they could get more money out of and threaten them with audits,” instructing LMS to say  
5 the Company had suspicions that they were out of compliance. Indeed, FE 1 stated that the sales  
6 teams would actually write out the threatening audit letters and give them to LMS to then send to  
7 the client. FE 1 stated that frequently, neither sales nor LMS had real evidence that customers  
8 targeted for audits were noncompliant, but that the mere threat of an audit would put the customers  
9 under so much pressure, because of the enormity of the potential penalties, that customers had no  
10 choice but to agree to Oracle’s demands that the client purchase cloud products. FE 1 stated that  
11 once the cloud sale was complete, the sales team would tell LMS that the customer had trued up,  
12 and LMS would close the file without even following-up with the client (making clear that the  
13 audit was initiated as a mere pretext to push the cloud sale through). FE 1 stated that “any  
14 statements from Oracle that LMS was independent from sales are a lie.”

15           90.     FE 4 independently corroborated reports by FE 1 about the close coordination  
16 between LMS and sales as part of the ABC scheme. FE 4 stated that the sales team would trigger  
17 audits, which LMS would run and then send back to the sales team for review. FE 4 explained that  
18 LMS would never send a letter to a customer without approval by the sales manager or account  
19 executive handling the customer.

20           91.     FE 3 further corroborated these reports, stating that LMS worked with sales  
21 personnel to ensure that customers signed ABC-based deals: by the start of the Class Period, as  
22 Oracle pushed for higher cloud growth, LMS was given expanded authority to initiate audits, and  
23 sales would come in “to finish the deal.”

24           92.     Similarly, FE 6, a Channel Sales Representative from October 2010 to January 2018  
25 who worked with authorized resellers to engineer deals with customers, confirmed that he learned  
26 from vendor partners that customers were made to purchase products under threats of audit. FE 6  
27 stated that it was a “regular practice” for sales representatives to contact LMS to start an audit  
28 when the customer was not going to buy cloud product, and tell LMS “[t]hey’re not going to buy



1 anything from me so let's just audit them." LMS would find a compliance violation, and the  
2 representative would start negotiating from there. FE 6 confirmed that these "extortive" tactics  
3 were a "common practice."

4 93. Oracle's audit of the City and County of Denver is an example of Oracle's  
5 deployment of the ABC tactic. As part of its investigation, Lead Counsel obtained documents  
6 concerning Oracle's audit of Denver from a CBS reporter, who obtained these documents through  
7 a FOIA request. The documents reflect that on July 27, 2016, Denver received a letter from Sean  
8 Cogliardi, an Oracle Senior License Consultant, stating that the Company would initiate an audit  
9 of its compliance with its license for on-premises products in three days, notwithstanding the fact  
10 that Denver's contract provided for a much longer notice period. *See* Figure 1, below.

11 94. Notably, while Denver requested that the parties maintain a documentary record of  
12 all audit-related discussions so that it could comply with Colorado's open records laws, Oracle  
13 resisted this request, insisting on face-to-face discussions and stating that if Denver did not  
14 capitulate, legal counsel would need to be involved. In an email to Cogliardi, Denver "reiterated  
15 [its] earlier request that all audit-related communications continue in writing." In response,  
16 Cogliardi claimed that Denver's contract required it to respond to unwritten audit communications  
17 and that "Michelle Cline, Oracle's Legal Counsel is copied on this email. Please provide contact  
18 information for City and County of Denver's attorney should the matter need to be handled by our  
19 respective Counsels."

20 Dear Mr. Cardenas,

21 My name is Sean Cogliardi and I am with Oracle License Management Services (LMS), a group within Oracle Finance that  
22 delivers services to govern, manage, and promote awareness of the proper use and distribution of Oracle solutions. LMS  
regularly conducts license audits as a part of its license management validation program under the rights contained in  
our agreements.

23 I am contacting City and County of Denver to initiate a license audit to ensure that the organization's use of Oracle  
products is in accordance with the terms and conditions specified in its agreements.

24 I will follow up with you in three business days to make sure you received my email, answer any questions you may  
25 have, go over the audit process and establish a project timeline. I would also like to schedule an in person meeting with  
you and your team at your earliest convenience. Please do not hesitate to reach out should you have any question.

26 Best Regards,

27 Sean Cogliardi

28 **Figure 1.** Excerpt from July 27, 2016 letter from Oracle to the City and County of Denver.

1           95.     Next, Oracle LMS held an onsite (face-to-face) meeting with Denver on October  
2 20, 2016. Consistent with reports by FE 1 that LMS did not close out sales-driven audits (but  
3 simply let sales swoop in once the customer had been sufficiently intimidated), Oracle did not  
4 deliver a final audit report to Denver detailing the manner in which the client was supposedly non-  
5 compliant and demanding payment for those violations.

6           96.     Instead, on November 28, 2016, Denver discussed “‘right sizing’ [Denver’s]  
7 licensing agreement,” not with LMS, but with Richard Luby, an Oracle *sales manager*. In an  
8 email dated December 2, 2016, Luby pressured Denver to quickly make a deal to resolve the audit,  
9 telling Denver that further delay could result in a *tripling* of its audit penalties from approximately  
10 \$3 million to “in excess of \$10M.” Specifically, Luby told Denver employees that the “sales group  
11 at Oracle [originally] believed we could resolve CCD’s Oracle licensing issues for somewhere  
12 between \$2.5-\$3M.” However, “[s]ince this time [Denver] sent LMS a detailed spreadsheet listing  
13 [Denver’s] deployed Oracle environment, leading LMS to now believe the current over-  
14 deployment would require in excess of \$10M to license. Our SVP has communicated extensively  
15 this week with the LMS director on this issue, and has been struggling to secure LMS’ consent for  
16 a \$3M agreement, but is only willing to do so if Denver is in agreement on the number.”

17           97.     Significantly, after Denver expressed its willingness to accede to Oracle’s demands,  
18 that sales manager told Denver that the sales team would arrange for LMS to put the audit on hold  
19 while the sale was being negotiated: “Our Sr VP [of Oracle *sales*] *will be talking with Oracle LMS*  
20 *today about holding/freezing the audit so we can go through this process*. He asked me if a 6  
21 week freeze will be sufficient . . . .” However, according to Luby, LMS would only agree to a  
22 freeze if Denver acted quickly on a deal. Specifically, Luby told Denver that LMS was “under  
23 increased internal pressure due to earlier delays” and that LMS “followed up with our VP Brent  
24 Mitchell agreeing to put their process on hold if the request goes to [Denver City] council before  
25 the holidays.”

26           98.     If Oracle’s aim were to bring Denver into compliance, it would have first completed  
27 the audit before attempting to sell the client additional products in order to ensure that the client  
28 was purchasing whatever it needed in order to “right size” its licenses. But Oracle was *not*

1 interested in bringing Denver into compliance – rather, it was interested in pushing cloud.  
2 Accordingly, Oracle froze the Denver audit, pivoted to sales, and left the threat of an audit hanging  
3 over the client while those sales negotiations were ongoing.

4 99. As noted above, at the time of the audit, Denver was strictly an on-premises  
5 customer of Oracle’s and, as such, the audit concerned Denver’s use of on-premises software.  
6 Accordingly, any legitimate “right sizing” of Oracle’s on-premises licensure should have involved  
7 the acquisition of additional licenses for on-premises software. Instead, on December 22, 2016,  
8 Oracle told Denver that it would be forced to pay an extra \$2 million to “right size” its *on-premises*  
9 licensing, unless it “purchased” a one-year subscription to Oracle’s *cloud*. Specifically, Oracle  
10 told Denver it had two options: pay \$8 million in additional fees without a cloud subscription  
11 (including \$3 million for the license and the remainder for new support and existing support), or  
12 pay \$6 million with a one-year cloud subscription (including only \$1.2 million for the license, \$1.7  
13 million for cloud, and the remainder for support). *See* Figure 2, below.

14 100. Importantly, Oracle’s email explicitly states “Please note that the list of products  
15 included within the [on-premises] Unlimited License Agreements (ULA) in both options is *exactly*  
16 *the same*.” In other words, Denver would acquire *the same* on-premises licensing under *either*  
17 option – the only difference was that Oracle would provide a \$2 million discount for “right-sizing”  
18 those licenses if Denver agreed to nominally “buy” a one-year cloud subscription.

Based on numerous discussions and meetings surrounding licensing for City and County of Denver I have collected the following information to provide you an easy to view summary of pricing. The below summary has two options intended to highlight the long-term savings of leveraging our Cloud Service option.

**1. ULA without Cloud Subscriptions**

Net License:	\$ 2,993,340
Net New Support:	\$ 658,535
Existing Support:	\$ 878,619
<hr/>	
Year one Total:	\$ 4,530,494
<b>5 Year TCO: \$8,043,254</b>	

Year 1	Year 2	Year 3	Year 4	Year 5
\$4,530,494	\$1,537,154	\$658,535	\$658,535	\$658,535

**2. ULA with Cloud Subscription**

Net License:	\$ 1,247,365
Net Cloud Fee:	\$ 1,745,976
Net New Support:	\$ 274,420
Existing Support:	\$ 878,619
<hr/>	
Year one Total:	\$ 4,146,380
<b>5 Year TCO: \$6,122,680</b>	

Year 1	Year 2	Year 3	Year 4	Year 5
\$4,146,380	\$1,153,039	\$274,420	\$274,420	\$274,420

**Figure 2.** Excerpt of an email in which Oracle tells Denver it will be charged an extra \$2 million to acquire *the exact same* on-premises licenses, unless it buys a one-year cloud subscription.

101. Tellingly, Oracle only priced in a one-year subscription to cloud services when presenting Denver with a 5-year licensing proposal, demonstrating that Oracle had no expectation that Denver would use its cloud subscription beyond the first year.

102. Reports from the senior former Oracle sales executives identified above make clear that Oracle's deployment of the ABC tactic in its audit of Denver was no anomaly. Instead, the use of audits to coerce clients was a primary vehicle through which Oracle sold cloud services. FE 1 confirmed that during the Class Period at least 80% of Middle East and Africa cloud revenue was generated by "inserting cloud into compliance-based deals." In particular, FE 1 reported that more than 75% of their team's cloud sales in 2017 were made to customers under threat of license audits, who purchased the product simply to avoid the hefty penalties; in 2018 such sales accounted for 86% of his team's revenue.

103. Statements by FE 2, who had visibility into Oracle's North American cloud sales, confirm that 90-95% of those cloud sales were engineered deals, including ABC deals that were

1 driven by “audits or the threat of audits.” Specifically, FE 2 reported that 90-95% of the cloud  
2 deals FE 2’s team dealt with had no “use cases” attached to them.

3 104. As background, When making a legitimate sale, Oracle generates a “use case” for  
4 each customer that describes the customer’s needs and the Oracle products or services that would  
5 be appropriate to meet those needs. FE 2 explained that the absence of these “use cases” in  
6 connection with cloud deals was highly unusual: “Something like ninety to ninety-five percent of  
7 transactions that were closed did not have use cases attached to them, where a customer said, ‘I’m  
8 buying with intent.’ Why is the customer buying these products if there is no use case for them to  
9 get it?”

10 105. When FE 2 followed up with customers and with sales personnel, FE 2 discovered  
11 that these deals were generated through the ABC tactic or were attached deals, and that customers  
12 neither intended to use nor renew the cloud products. Specifically, FE 2 stated that the sales team  
13 would hand FE 2 and colleagues a cloud deal and tell them that the customer had no intent to  
14 actually use the product, so now FE 2 and colleagues needed to try to convince them to do so.  
15 Moreover, customers told FE 2 that they had no intention of using the cloud credits they had  
16 purchased,<sup>30</sup> and that they either bought cloud credits as part of an ABC deal or did it to reduce  
17 their perpetual spend on legacy support costs (*i.e.* an attached deal).

18 106. FE 1 reported that the ABC scheme was used to close huge cloud sales worth tens  
19 of millions of dollars, involving high-profile clients like Saudi Telecom Company, a \$120 million  
20 deal, attaching \$22 million in unwanted cloud. FE 1 explained that large compliance-based deals  
21 sometimes fulfilled the MEA (“Middle East and Africa”) region’s sales quotas for the entire year.  
22 FE 1 explained that it was “crystal clear these [sales] are fake” because “none of these deals are  
23 renewed.”

24 107. Indeed, FE 1 reported that less than 9% of the MEA region’s cloud subscriptions  
25 were renewed, and many were never even used. In fact, FE 1 stated that, using the threat of an  
26 audit, cloud products were sold to numerous customers who not only did not, but ***could not***, use

27 \_\_\_\_\_  
28 <sup>30</sup> Customers who purchase “cloud credits” pre-pay to access Oracle cloud services; those credits  
are depleted as customers consume those services.

1 them. In Saudi Telecom Company’s case, for instance, government regulations prevented the  
2 client from using a cloud data center that was located outside the country. Saudi Telecom still  
3 purchased \$22 million worth of cloud products, despite the fact that there were no Oracle data  
4 centers in-country at the time of that purchase, because it was not interested in using the cloud  
5 product, but, rather, was effectively purchasing a discount on audit penalties.

6 108. Corroborating these reports of dismal renewal rates associated with ABC deals, FE  
7 5 noted that his Customer Success team recorded when customers purchased cloud product under  
8 threat of an audit so that the team members would not waste their time contacting the customer  
9 about renewals.

10 109. Notably, FE 3 reported that the use of the ABC scheme to coerce clients into  
11 purchasing cloud products was “an active practice” at Oracle and that the practice “was stepped  
12 up into high gear at the beginning of” fiscal year 2017 (*i.e.*, which, for Oracle, begins in June  
13 2016). Indeed, FE 3 stated that just before the start of the Class Period, the pace and frequency of  
14 Oracle’s auditing increased exponentially: from 1 to 2 audits in FE 3’s region prior to the  
15 Company’s big cloud pivot to 5-6 audits *per quarter* – as much as a ***twenty-four-fold increase in***  
16 ***audits***. At that time, the Company began going after even the small and midsize customers who  
17 were in the \$50,000-\$75,000 range, and sent audit letters regardless of whether a sales person was  
18 in an active sales cycle with that customer. FE 3 further stated that the Company “also went after  
19 customers who hadn’t purchased any licenses in two years. If a customer was audited and they  
20 had not paid for a license, the Company would forget about the audit if they bought cloud.”

21 110. Multiple former Oracle employees reported that Defendants Hurd and Catz  
22 personally approved engineered deals, including Audit, Bargain, Close deals. As FE 1 explained,  
23 sales teams had to request approval for all of their sales using the Deal Approval System (DAS).  
24 When inputting approval requests into DAS, Oracle employees were required to show that the deal  
25 was a “cloud insertion” deal, and in particular that LMS was engaged as part of the sales process  
26 (*i.e.*, that audits were being used to facilitate the deal). FE 1 further explained that in ABC deals,  
27 the sequencing of DAS reports showed that LMS was engaged with the sales team and the client.  
28 FE 1 stated that all deals worth more than \$5 million had to be approved by “HQ,” which meant

1 either Hurd or Catz. FE 1 stated that he would see Hurd's and Catz's names on approvals of  
2 "compliance" deals in the DAS system and in approval notifications that were released once Hurd  
3 or Catz signed off on the deal.

4 111. Like FE 1, FE 3 confirmed that cloud deals made using the ABC scheme were  
5 escalated to Defendant Hurd's office if a discount in excess of 50% was offered on software. FE  
6 3 stated that 80% of FE his engineered deals went to Hurd's office for approval. FE 3 stated that  
7 he personally had "audit cloud deals," clearly marked as such, that were approved by Hurd's office.

8 112. FE 1 also reported that he and other EMEA sales teams routinely discussed the  
9 volume and size of their audit-driven cloud deals with Loic Le Guisquet, Oracle's President of  
10 EMEA, Asia Pacific, and Japan, who managed the Company's operations in these regions, sat on  
11 the Oracle Executive Management Committee during the Class Period, and reported directly to  
12 Defendant Hurd. FE 1 explained that, on a weekly basis, he prepared slides concerning EMEA  
13 sales volume and progress and provided them to Le Guisquet for presentation to Defendant Hurd.  
14 Indeed, Le Guisquet routinely instructed FE 1 to ensure that the slides defined certain terms or  
15 included certain content so that Defendant Hurd would be able to follow them. FE 1 stated that  
16 these slides "would very clearly say that LMS was engaged [on cloud deals presented in the slides],  
17 and that they were compliance deals." In addition, FE 1 reported attending "QBR" or quarterly  
18 business review meetings, at which sales executives received instructions on how to generate  
19 engineered deals. For instance, FE 1 reported that executives were instructed to offer customers a  
20 90% discount on on-premises licenses if they purchased \$300,000 worth of cloud subscriptions.  
21 Likewise, FE 1 reported that executives were told at these meetings that, if a customer targeted for  
22 an engineered deal objects that they did not need, or will not use cloud products, sales personnel  
23 should assure the customer that they did not need to use the product, and that the purchase of cloud  
24 products was merely a necessary condition to unlocking the on-premises discount.

25 113. FE 2 likewise explained that the metrics used in presentations going directly to  
26 Oracle's senior management made clear that Oracle's cloud revenue was driven by engineered  
27 deals. FE 2 stated that "[a]mong all of Hurd's direct reports there was absolute awareness of the  
28 quality of the cloud revenue." FE 2 stated, "I saw presentations that went to Hurd's directs. I saw



1 the info they were receiving about deal quality and it was absolutely something that was  
2 discussed.” FE 2 reported that these presentations stated that 90-95% of the Company’s cloud  
3 deals did not have use cases associated with them, demonstrating they were not driven by actual  
4 customer need. FE 2 also reported that FE 2 saw slides in draft presentations prepared for Hurd  
5 listing “attached” as the top “use case by customer” for cloud purchases (*i.e.*, the reason they  
6 purchased cloud).

7 114. FE 3 also discussed his concerns about Oracle’s engineered deals –*i.e.*, audit-driven  
8 and attached deals – being “borderline unethical” with another of Hurd’s direct reports, Rich  
9 Geraffo, Vice President of Sales. FE 3 reported that Geraffo responded by stating that “cloud was  
10 the future of Oracle’s business model, and that auditing was a part of Oracle’s business and strategy  
11 to drive revenue.”

12 **2. Oracle Also Uses “Attached Deals” To Disguise Legacy On-Premise**  
13 **Revenue As All-Important Cloud Revenue And Pad The**  
14 **Company’s Cloud Growth**

15 115. As noted above, Oracle also generated illusory cloud growth through the use of  
16 “attached deals” – deals in a which a customer seeking to renew its “on-premises” contract was  
17 offered a sharp discount on those services if it agreed to purchase a one-year cloud subscription  
18 that it neither wanted nor needed. Cloud “revenue” generated through these “attached deals” was  
19 never sustainable and did not, as Oracle misled investors into believing, represent Oracle’s  
20 growing share of the cloud market. Instead, these one-year cloud subscription that clients neither  
21 wanted nor renewed (nor even used) amounted to short-term infusions of cash from an artificial  
22 revenue stream that Defendants knew would quickly evaporate. FE 3, FE 7, FE 8, and FE 4 all  
23 confirmed that Oracle relied heavily on this tactic throughout the Class Period to produce  
24 significant purported cloud “revenue.”

25 116. FE 7, who was responsible for Oracle’s cloud business in the Czech Republic,  
26 Hungary, and Slovakia, reported that his teams relied heavily on “attached deals” to sustain Oracle  
27 cloud sales, which had “struggle[d] from the inception.” FE 7 explained that, in the typical  
28 “attached deal,” a customer had a large on-premises contract for database or middleware products.



1 In exchange for a lowered price on these on-premises contracts, the customer “filled the difference  
2 [between the full contract price and the discounted price] with cloud products.” Because the  
3 customer’s on-premises support and maintenance costs were calculated based on the total value of  
4 their on-premises licenses, the customer accepted the attached deal, since it would save on support  
5 maintenance. FE 7 gave the following example: if a client had \$1 million worth of on-premises  
6 licenses, but ended up paying \$900,000 through an attached deal, with the addition of \$100,000 in  
7 cloud, this client would save more than \$20,000 per year in support costs. As FE 7 explained,  
8 however, the problem was that because almost none of these customers ever wanted or needed  
9 cloud services in the first place, they “never renewed the cloud portion of their deals. The products  
10 did not work very well, and almost none of the customers actually wanted them. They simply  
11 agreed to the attached deals for the discount on their licenses and maintenance costs.” FE 7 further  
12 reported that customers were often told that they were receiving a free cloud subscription on top  
13 of their on-premises renewal, while Oracle internally recorded the deal as a discounted on-  
14 premises contract and a full-price cloud sale. FE 7 reported that 65% of his teams’ cloud sales  
15 were made through engineered sales, including attached deals, and that at least half of his teams’  
16 Paas and Iaas sales were attached deals.

17 117. FE 2, FE 3, and FE 4 all echoed FE 7’s description of the mechanics of Oracle’s  
18 attached deals and the abysmal renewal rates associated with them. FE 3 stated that 90% of cloud  
19 revenue in his territory was generated through attached deals. FE 3 stated that “[n]early every  
20 [cloud] deal” FE 3 was involved with was an attached deal.

21 118. FE 4 likewise confirmed that attached deals were “commonplace,” though FE 4  
22 said that most cloud sales were driven by “extortion” through the audit process, described above.  
23 By using the attached deals, FE 4 explained, “[e]ssentially they were not growing their business  
24 or building additional licenses, they were just shifting revenues from one set of books [on-premise]  
25 to another [cloud].” Indeed, according to FE 4, Oracle knew that customers were going to just let  
26 the cloud contract expire, and sales leadership often expressly communicated to customers that  
27 they could “*wash [their] hands*” of cloud products after the contract expired but keep the other  
28 reduced support costs for on-premise products.

1           119. FE 3 confirmed that “the cloud subscription involved in the [attached] deal was  
2 only for one year of service. After that first year, most companies had no interest in renewing the  
3 cloud services but were enjoying the decreased maintenance and service costs on their \$100,000  
4 worth of [on-premises] software.” FE 3 corroborated reports by Oracle’s other former employees  
5 that sales personnel explicitly agreed with customers that they would not need to use or renew the  
6 cloud software as part of the attached deal. FE 3 reiterated that “[c]ustomers who were given this  
7 deal did not renew the cloud subscriptions once they ran out,” and stated that FE 3 saw attached  
8 deals renewed less than 15% of the time. FE 3 stated that periodic reports detailing cloud  
9 utilization reviewed by FE 3 showed many of Oracle’s customers who took attached deals were  
10 not using their cloud credits and had not even logged into their product. FE 7 stated that his teams  
11 would review customer cloud usage reports and see that “ninety percent of our attached deals were  
12 not using at all. I would say it was [throughout 2017 and 2018]. I had relationships with the other  
13 sales territories,” including Austria, Poland, Russia, and Hungary, “and we were not an exception.”  
14 FE 7 stated, “Almost no one was turning anything on. They weren’t using their [cloud] credits.”

15           120. FE 8 also corroborated these accounts, stating that it was “extremely common to  
16 provide very steep discounts to on-premise licenses in exchange for a customer purchasing cloud  
17 subscriptions,” estimating that more than 75% of his cloud revenue came from attached deals. FE  
18 8 confirmed that both Oracle and the customers on the receiving end of the attached deals  
19 understood that the cloud subscriptions would not be renewed after one year. FE 8 stated, “It just  
20 wasn’t sustainable. Customers were purchasing a million dollars of cloud subscriptions but weren’t  
21 planning on making that same purchase next year. They were not renewing.” FE 8 reported that  
22 less than 10% of his clients renewed their cloud subscriptions at the same level they initially signed  
23 up for. If a client renewed for half of what they had originally been sold, he would be “ecstatic,”  
24 but even that was rare. Most just declined to renew any amount of cloud product. “They did it just  
25 for the deal and then would not renew the next year.”

26           121. FE 2 likewise reported that FE 2 learned from speaking with customers and sales  
27 personnel that, when speaking with customers, sales affirmatively acknowledged that the  
28 customers would not renew their cloud subscriptions after a year in order to preserve the economic

1 attractiveness of the engineered deal, whether an ABC or an engineered deal. Indeed, FE 2  
2 explained that given the structure of the attached deal, there was a strong economic incentive for  
3 customers not to renew after the one year subscription was up, in order to maximize the benefit of  
4 the continuing discount on maintenance costs for on-premises product.

5 122. FE 9 and FE 5, both Directors of Customer Success at Oracle from 2016 to 2018  
6 and whose teams were responsible for customer adoption and expansions, related that many of the  
7 cloud contracts were called “dead on arrivals” or “DOA,” because when it came time to renew, the  
8 customers would refuse and, instead, say that they only bought the cloud product because they got  
9 a discount on another product they actually wanted. According to both FE 9 and FE 5, at some  
10 point Oracle changed the nomenclature from “dead on arrival” to “no plan adoption” or “financial  
11 deal” because of the connotation that Oracle’s sales teams were selling products that were not  
12 going to be used.

13 123. FE 5’s and FE 9’s group would reach out to customers approximately one quarter  
14 before they were up for renewal to check on the health of the account. They would hear that the  
15 customers had never used their cloud products. FE 9 explained that customers would tell FE 9’s  
16 group that they had gotten cloud product in order to get a better deal on another product. FE 9  
17 corroborated the accounts of other former employees and stated that a customer would be quoted  
18 a high price for just an on-premises product and then quoted a lower price for the on-premises  
19 product combined with cloud. The customer would take the second option because it was cheaper  
20 even if they had no intention of using the cloud.

21 124. Enterprise Resource Planning (ERP) was one of Oracle’s most important cloud  
22 products, with Defendant Hurd identifying it as the “most important application segment in the  
23 world” and stating that “ERP is one of those [cloud products] that we’re particularly focused in on  
24 here.” With regard to Oracle’s ERP cloud product, customers told FE 9’s group that they already  
25 had an ERP system and did not want to use Oracle’s. FE 5 corroborated that customers would  
26 admit that they had only purchased cloud, including ERP, to get a discount on on-premises  
27 products. These customers, according to FE 5, “didn’t have any intention to use it. They were just  
28 bundling it together to reduce their overall costs.” FE 5 described how a lot of the cloud contracts

1 and related revenue were from customers who neither wanted nor needed the cloud products. FE  
2 9 stated that ERP employees were very vocal with Customer Success managers and directors about  
3 how the “renewal rates suck.”

4 125. FE 9 stated that cloud ERP renewals would range from only 15%-25% and that  
5 90% of the accounts that did not renew were DOA. FE 5 similarly explained that Oracle’s renewal  
6 rate was 15-20% for certain quarters, and that the percent of DOA customers that did not renew  
7 was 90%.

8 126. FE 9 further stated that customer health was measured as “green,” “yellow,” or  
9 “red.” If customer health was “red,” it meant that Oracle was anticipating that the account would  
10 “churn,” or fail to renew, and Customer Success would have to provide a reason for said churn.  
11 According to FE 9 and FE 5, Oracle had an internal system called Customer Lifecycle Management  
12 (“CLM”) that tracked the health of customer accounts and the reason for customer “churn.” CLM  
13 would show whether accounts were red, yellow, or green and the reasons for accounts not  
14 renewing. According to FE 5, red accounts were DOA and yellow accounts would need work to  
15 convince customers to renew. FE 5 stated that the health of the portfolio and the corresponding  
16 color was automatically assigned in CLM, and the information was accessible to renewal  
17 representatives, customer success managers, certain sales teams, and the implementation success  
18 managers responsible with getting customers to deploy products.

19 127. Corroborating FE 9’s account, FE 5 stated that whether an account was DOA would  
20 be reflected in the CLM system and that team members would put in the customer’s disposition  
21 notes that they were “DOA.” Through these entries in the CLM system, FE 9 knew that ERP  
22 renewals were only 15-25% and that 90% of the accounts that did not renew were DOA. According  
23 to FE 9, only approximately 10% of the customers that were DOA could be convinced to use the  
24 product. FE 9 described that Customer Success reports based on information from CLM were  
25 discussed in meetings with the VP and SVP of Customer Success. Customer Success would put  
26 together these reports, which FE 9 understood would be summarized and presented at a higher  
27 level.

1           128. FE 9 was told each renewal rate for accounts marked red, yellow, and green during  
2 quarterly management meetings. FE 5 similarly described how the number of DOA cloud deals  
3 was common knowledge within the customer success team and that “[a]t every quarterly business  
4 review DOA rates would come up,” with the statistics of each type of customer health (“red,”  
5 “yellow,” and “green”) seen in spreadsheets distributed during these meetings and the DOA rates  
6 were “always an issue.”

7           129. FE 5 explained that Doug Rhoades, the Senior Director of Customer Success, ran  
8 these meetings, and Steve McMillan, Senior Vice President of Customer Success attended the  
9 meetings as well. FE 5 and his peers often complained to Rhoades that the DOA rates were so  
10 high and that there was no chance of convincing DOA customers to renew their cloud contracts.

11           130. FE 7 stated that Oracles was “effectively hiding from customers the cloud portion  
12 [of the contract] because customers, in the beginning, didn’t want to hear about cloud.” FE 7  
13 reported that “in many cases,” cloud subscriptions would be added to a customer’s contract even  
14 though Oracle had never discussed that description with them. “Sometimes they would only find  
15 out when someone asked them to renew, or if automated email systems sent out information about  
16 their cloud credits.”

17           131. FE 6 corroborated that customers often did not know cloud products were inserted  
18 in a deal or how to use those cloud products. FE 6 stated that FE he heard from many sales  
19 representatives that Oracle “would bundle things together and push cloud subscriptions right  
20 through” and that customers did not “underst[and] what they were getting in terms of cloud.”

21           132. Similarly, in certain instances, FE 9 would reach out to customers to set up the  
22 product, the customer would ask what the product was and tell FE 9 that they were not going to  
23 pay for it. FE 9 would have to then report and justify why there was churn on the original product.  
24 When FE 9 raised these issues FE 9 “got [his] ass handed to [him] by the Sales VP and Sales.”

25           133. The accounts of Oracle’s former employees confirm that Defendants Hurd and Catz  
26 were well aware that a substantial volume of Oracle’s cloud revenue was generated through these  
27 attached deals, and was therefore illusory, unsustainable, and did not represent actual capture of  
28 market share. For example, as numerous former Oracle employees stated, entries in Oracle’s

1 internal deal tracking system clearly noted when cloud sales were the product of engineered deals,  
2 and deals at or above the \$5 million threshold required and received Hurd's approval.

3 134. Corroborating this point, FE 7 reported that entries on the DAS system would make  
4 clear when a deal was attached because the entry would request discounts to an Oracle on-premises  
5 contract in order to facilitate a cloud sale, and "notifications of larger deals would be sent to Catz's  
6 office for approval and to Hurd's office for inclusion in the [revenue] forecast." Likewise, as  
7 discussed above, FE 3 stated that software discounts in excess of 50% had to be approved by  
8 Defendant Hurd's office, and that virtually all attached deals involved on-premises discounts of  
9 this magnitude. FE 3 stated that 80% of his engineered deals went to Hurd's office for approval.

10 **3. Regulator Findings And Industry Experts Further Confirm**  
11 **Oracle's Use Of "Audits" To Generate Cloud Revenues From**  
12 **Customers Who Do Not Actually Want Oracle Cloud Product**

13 135. The above accounts provided by Oracle's former executives have been  
14 corroborated by industry experts and the findings of one of the world's top anti-competition  
15 regulators, the National Economic Prosecutor's Office of Chile (the "FNE"). The FNE is Chile's  
16 chief "authority responsible for defending and promoting competition in all markets or productive  
17 sectors of the Chilean economy."<sup>31</sup>

18 136. The FNE has long been recognized as a top enforcement agency, with the Chairman  
19 of the U.S. FTC publicly stating in 2011 that "Chile has one of the most advanced antitrust systems  
20 in Latin America."<sup>32</sup> Further strengthening its capabilities, the FNE, the Department of Justice, and  
21 the FTC entered into a cooperation agreement that provides "for antitrust enforcement cooperation  
22 and coordination."<sup>33</sup>

23 137. On September 11, 2015, the FNE initiated an investigation into alleged anti-  
24 competitive conduct by Oracle. The investigation, which lasted over two-and-a-half years before  
25 its findings were made public, was comprehensive in scope and included, among other things, the

26 <sup>31</sup> <http://www.fne.gob.cl/en/about-us/fiscalia-nacional-economica/>

27 <sup>32</sup> <https://www.justice.gov/opa/pr/department-justice-and-federal-trade-commission-sign-antitrust-cooperation-agreement-chile>

28 <sup>33</sup> *Id.*

1 FNE (i) conducting a survey of 115 Oracle clients; (ii) gathering statements from 50 Oracle  
2 representatives and employees; (iii) collecting additional statements from Oracle's customers,  
3 competitors, former employees and experts; and (iv) reviewing policies and practices of the  
4 company and their impact on competition.

5 138. Oracle was advised of the FNE's investigation from the outset. On September 16,  
6 2015, Vanessa Facuse Adreucci of the FNE sent Oracle's representative, General Manager Rodrigo  
7 Astorga, a certified letter informing Oracle of the inception of its investigation. After advising  
8 Oracle of the investigation, the FNE and Oracle remained in regular contact about the regulator's  
9 inquiry and findings, with Oracle being provided a full opportunity to attempt to address and refute  
10 the allegations.

11 139. Throughout its investigation, FNE also requested information from Oracle that  
12 specifically pertained to the audit process and the ABC deals. For example, on March 31, 2016,  
13 FNE's Division Chief for Unilateral Abuse, Gaston Palmucci, sent a letter to Oracle requesting  
14 that Oracle produce a complete list of clients in Chile and their addresses whose licenses had been  
15 audited, analyzed and monitored by LMS between 2013 and 2016. On September 29, 2016, FNE  
16 requested from Oracle: (i) any document or internal presentation related to audit-driven sales of  
17 Oracle products for the years 2014-2016; (ii) any response to Oracle's LMS services quality survey  
18 for clients between 2014 and 2016; and (iii) sales policies relating to the promotion of Oracle  
19 products to clients negotiating with LMS between 2014 and 2016. On October 13, 2016, FNE also  
20 asked for certain Oracle employees to testify at an FNE hearing, including an LMS principal  
21 consultant and several sales personnel, including Territory and Account Managers and a Regional  
22 Sales Director. Further, on November 17, 2017, FNE submitted a letter to Oracle requesting  
23 information regarding the amount of sales generated through audits.

24 140. FNE also requested information and documents from Oracle's customers similarly  
25 pertaining to Oracle's audits and ABC deals. For example, on October 22, 2015, FNE's Division  
26 Chief for Unilateral Abuse, Gaston Palmucci, sent a letter to the General Manager of certain of  
27 Oracle's clients, such as Walmart and IBM, requesting the companies' representatives appear at a  
28 hearing and assist with FNE's investigation. Additionally, on April 28, 2016, FNE submitted a



1 questionnaire to 34 Oracle clients asking various questions, including whether an audit occurred  
2 and an infraction was found, and whether the client acquired additional Oracle products as a result  
3 any ensuing negotiation. Next, on September 26, 2016, FNE submitted letters to 21 Oracle clients  
4 asking for: (i) documents related to Oracle’s audits and the “true up” processes, including audit  
5 reports, presentations, and letters; and (ii) emails related to the negotiation process between  
6 Oracle’s clients and Oracle’s sales and/or LMS for fines or purchases of new products. Then, on  
7 May 26, 2017, FNE submitted a letter to Oracle clients requesting further information regarding  
8 the auditing and negotiating processes, including: (i) whether, if an audit violation was found, the  
9 client had to obtain additional services or products from Oracle; (ii) all emails with Oracle’s sales  
10 personnel or LMS related to negotiations, including emails pertaining to the purchase of new  
11 products.

12 141. Following its lengthy investigation, the FNE prepared a 30-page report outlining  
13 its findings (the “Report”) and requiring Oracle to agree to various reforms. As stated in the FNE’s  
14 March 28, 2018 Report, which was first made public in April 2018, “in the case of Oracle, it can  
15 be said that audits are used with relative frequency.”<sup>34</sup>

16 142. The FNE further found that, after informing customers that they were being audited,  
17 members of Oracle’s sales department would enter the “auditing” process and propose “sales  
18 solutions” that were *not* “related to the [audit] findings detected.” Specifically, the FNE found  
19 that “‘cloud’ products or licenses that were neither wanted nor used by customers were  
20 incorporated into this [sale] solution.” As the FNE explained in its Report, “in the commercial  
21 proposals that follow an audit, [Oracle] includes cloud services that were not always wanted by  
22 the clients.”

23 143. The Chilean regulator found numerous customer complaints “in relation to Oracle’s  
24 audit policy,” with “clients repeatedly stat[ing] that contractual terms would appear in the audits  
25 that they did not know of.” The Chilean regulator further found that Oracle’s “clients described  
26 consistently the way Oracle acted in this process [of auditing] as especially tough, with surprising

27 \_\_\_\_\_  
28 <sup>34</sup> The FNE Report is in Spanish. The quotations in this Complaint are English translations of the Spanish text. U.S. media sources reported on the FNE investigation in July 2018.

1 and costly results for the client companies, and in which [Oracle] applied contractual clauses that,  
2 the [Oracle] clients noted, they did not have any knowledge until they received the audit reports.”  
3 The Chilean regulator emphasized how Oracle’s audits frequently related to products that  
4 customers did not know they purchased, with 64% of Oracle’s audits conducted on products that  
5 were “installed automatically.”

6 144. The FNE further highlighted that Oracle’s use of its audits constituted an “abuse of  
7 a dominant position” – a violation of Chilean fair competition laws – and that Oracle’s practice of  
8 misusing the audit process to generate unwanted cloud sales “could lead to a sale in the market  
9 contravening free competition.”

10 145. In an effort to stop Oracle from further misusing its “auditing” process to generate  
11 sales of unwanted product, the Chilean regulator insisted that Oracle institute a series of corrective  
12 measures. These measures required Oracle to, among other things (i) “improve the information  
13 [provided to Oracle clients] about products related to those for which the clients have acquired a  
14 license, but that could have an additional cost and require a separate licensing contract”; (ii) “create  
15 a special contact for clients to address disputes and complaints”; (iii) “improve the visibility for  
16 [Oracle] clients of the tools that allow them to verify internally if Oracle products that have been  
17 download and/or are being used in their systems to be able to determine ... if it is in compliance  
18 with Oracle’s licensing policies”; (iv) “improve the information given in the letters that open and  
19 close the process of auditing”; and (v) “implement local training to the workers from the division  
20 called License Management Services of Oracle (LMS), which is in charge of the [Oracle] audits.”

21 146. While Oracle agreed to implement reforms mandated by the Chilean regulator, it  
22 refused to acknowledge any wrongdoing or that it engaged in the underlying practices.  
23 Specifically, Oracle stated that it “should be noted that the implementation of such measures does  
24 not constitute or represent an acknowledgement by Oracle of the commission of any anti-  
25 competitive conduct, nor the recognition of the existence of any risk related to free competition.”

26 147. The Chilean regulators’ findings in its Report are also corroborated by the accounts  
27 of industry participants, which Oracle repeatedly discredited before and during the Class Period as  
28 spreading “conspiracy rumors.” For example, the advisory firm UpperEdge, which has advised

1 customers in over 700 audits, has explained that, based on its experience, if an Oracle “customer  
2 cannot develop a business case for migrating to Oracle’s Cloud solutions, then Oracle will create  
3 one, and audits are one of the more common tactics we have seen effectively drive Cloud sales.”<sup>35</sup>

4 148. Similarly, research and advisory company Gartner, which services clients in 100  
5 countries around the world, has explained that Oracle “uses high-pressure sales tactics to sell its  
6 cloud IaaS offerings, including software audits or threatening to dramatically raise the cost of  
7 database licenses if the customer chooses another cloud provider.”<sup>36</sup>

8 149. Finally, the advisory firm Palisade Compliance, which has advised hundreds of  
9 Oracle clients, has observed that Oracle, through its audits, attempts “to rig the system so  
10 customers are forced to use [their] cloud.”<sup>37</sup>

#### 11 **E. The Truth About Oracle’s Cloud Revenue Growth Emerges**

12 150. Eventually Oracle’s unsustainable practices fueling Oracle’s revenue growth began  
13 to collapse.

14 151. Former Oracle employees have explained how Oracle’s ability to deploy financially  
15 engineered deals slowed dramatically in late 2017, resulting in a slowdown in the Company’s  
16 cloud revenue growth and decline in its stock price. As FE 1 stated, cloud sales declined in late  
17 2017 because customers were “becoming more knowledgeable and hiring consultants that helped  
18 them fight back” when the Company attempted to use audits to drive a cloud deal. FE 1 said his  
19 own teams experienced this, and that his colleagues reported seeing this as well.

20 152. FE 8 also stated that Oracle’s use of engineered deals to drive cloud revenue  
21 ultimately led to plateauing cloud revenue growth towards the end of 2017. FE 8 said, “It just  
22 wasn’t sustainable. Customers were purchasing a million dollars of cloud subscriptions but  
23

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24 <sup>35</sup> Jeff Lazarto, “Oracle Gets Creative With Cloud Selling Tactics,” *UpperEdge* (April 10, 2018).

25 <sup>36</sup> Founded in 1979, Gartner is a leading research and advisory company serving clients in 100  
26 countries around the world. Technology research is Gartner’s flagship service and its reports have  
27 been cited in Oracle press releases, blog posts, and conference calls on several occasions. Dennis  
28 Smith et al., “Magic Quadrant for Cloud Infrastructure as a Service, Worldwide,” *Gartner* (May  
23, 2018).

<sup>37</sup> <https://palisadecompliance.com/new-years-resolutions-oracle-should-make/> (January 2, 2019)

1 weren't planning on making that same purchase next year. They were not renewing. They did it  
2 just for the deal and then would not renew the next year." Without these renewals, Oracle's sales  
3 declined.

4 153. As a result of these developments, beginning in December 2017, Oracle was forced  
5 to publicly report dramatically slowing cloud revenue growth, revealing to investors in a series of  
6 partial corrective disclosures the truth that Oracle's cloud revenue growth rates were illusory and  
7 unsustainable.

#### 8 **1. On December 14, 2017, Oracle Reports Stagnating Cloud Growth**

9 154. Leading up to the Company's second quarter 2018 earnings release on December  
10 14, 2017, analysts and commentators continued to trumpet the tremendous cloud growth Oracle  
11 had reported throughout the year and repeat the Company's statements touting its cloud pipeline  
12 and renewals. For instance, Trefis analysts reported on December 12, 2017 that:

13 Oracle's IaaS, PaaS, and SaaS revenues grew at high double digits through the year,  
14 with the trend expected to continue through fiscal 2018 as well. Oracle's cloud  
15 segment has been the only revenue stream to witness growth in recent years. Fiscal  
16 2017 was termed as a turnaround year for Oracle in terms of transitioning its  
17 customers to cloud-based offerings, with revenues jumping 50% to \$3.6 billion.  
18 The trend has continued in FY'18 thus far, with robust revenue growth across cloud  
19 services segments.

20 155. However, after the market closed on December 14, 2017, Oracle surprised investors  
21 by reporting that cloud revenue growth had decelerated, growing by less than 40%. Oracle's  
22 growth compared unfavorably to, among others, the 90% year-over-year growth reported by  
23 Microsoft less than two months earlier, and the 76% growth reported by Google Cloud. Oracle  
24 also reported disappointing cloud margins, which was a function of the fact that Oracle's cloud  
25 volume was ramping far less quickly than its competitors. Moreover, the Company reported  
26 significantly lower cloud growth estimates, stating it expected only mid-20% growth the following  
27 quarter – a marked decline.

28 156. Analysts and the financial press expressed concern about Oracle's slowing cloud  
growth and the sustainability of its cloud business. For instance, BMO analysts lowered their price  
target for Oracle shares from \$57 to \$55 on December 15, 2017, reporting as a "key point" that "a

1 major concern for investors is the long-term growth of cloud revenue, particularly the SaaS  
2 business, given the revenue miss and lower guide.” *Dow Jones Newswires* also reported that  
3 “Disappointment over Oracle results triggers downgrade, price cuts,” and “[a]nalysts were  
4 sounding some alarm after Oracle Corp. literally clouded up the view on a vital metric for growth,  
5 disappointing investors and analysts over both its results and forecast.”

6 157. Investors and analysts also connected the disclosure to Oracle’s sales practices,  
7 including the *Business Insider*, which noted in a December 15, 2017 article that “there are some  
8 signs that *some of Oracle’s customers are fed up with some of its hard-nosed sales tactics.*”  
9 Additionally JMP analysts noted in a December 15, 2017 report that “*many customers are irate*  
10 *with Oracle due to auditing practices* on the technology side of the business and have already  
11 placed their bets on AWS, Microsoft Azure, or Google Cloud Platform.”

12 158. In response to Defendants’ disclosures, Oracle stock declined by approximately  
13 4%, from \$50.19 per share on December 14, 2017, to close at \$48.30 per share on December 15.

## 14 2. On March 19, 2018, Oracle Reports That Its Cloud Growth Slowed 15 Even More Significantly

16 159. On March 19, 2018, Oracle issued its third quarter 2018 financial results, disclosing  
17 that the Company’s cloud growth had slowed even more significantly to only 32%. Again,  
18 Oracle’s reported cloud revenue growth stood in stark contrast to its competitors. In comparison,  
19 for the same quarter, Microsoft announced cloud growth of 98% and Google experienced 85%  
20 cloud revenue growth. Oracle’s cloud margins were again disappointing, coming in at 58.1%,  
21 which is far from the 80% Defendants had assured investors Oracle would achieve. In addition,  
22 Oracle admitted that it expected additional deceleration of the Company’s cloud business, with  
23 Catz telling investors on the Company’s earnings call that cloud revenues are “expected to grow  
24 19% to 23% in USD, 17% to 21% in constant currency,” well below the market’s expectations.

25 160. Analysts and commentators expressed deepening concern about Oracle’s cloud  
26 business. For instance, in a March 20, 2018 article entitled “Oracle’s cloud biz heading in the  
27 wrong direction right now,” *TechCrunch* reported that “Oracle’s cloud numbers could be reason  
28 for concern . . . . [T]he general trend from Oracle seems contrary to the eye-popping growth

1 numbers we have seen from other companies.” In a March 20, 2018 report entitled, “Cloud  
2 Decelerates Again,” Deutsche Bank analysts observed that apparently “strong SaaS bookings are  
3 not translating to rev[enue]s growth,” in part because of what appeared to be “slow Cloud Machine  
4 deployments” by clients who purchased cloud – *i.e.*, despite reporting growing cloud sales, the  
5 Company did not appear to be achieving sustained revenue due to cloud customers not actually  
6 using the product. The market linked Oracle’s faltering revenues to the use of the practices  
7 described herein, including in a March 20, 2018 JMP analyst report, which highlighted Oracle’s  
8 “cloud weakness,” including that there were “fundamental challenge[s]” in the Company’s cloud  
9 business, such as “Oracle’s auditing mentality compared to the ‘partner friendly’ nature of cloud  
10 platforms such as Amazon.”

11 161. In response to the Company’s March 19, 2018 disclosures, Oracle stock price  
12 declined nearly 10%, from \$51.95 per share on March 19 to \$47.05 per share on March 20, on  
13 high volume.

14 162. In the months following this partial corrective disclosure, investors’ questions about  
15 Oracle’s coercive sales practices intensified. In a May 21, 2018 article entitled “Oracle’s Strong  
16 Arm Cloud Tactics – the 2018 Model,” *Forbes* reported that Oracle was using its “‘Audit Bargain  
17 Close’ playbook” to “pressure customers into cloud adoption” and added that:

18 That hardly seems like a great business retention strategy, but given Oracle’s power  
19 over its customer base that comes from its licensing and compliance practices, it is  
20 a powerful tool. It does lead to more sales in the cloud category, which is just [what]  
21 Oracle wants. But it leads to questions that should be disturbing to Oracle customers  
22 and possibly to Oracle employees and investors: Has Oracle shifted its core  
23 competency from creating technology products to running an enterprise sales staff  
24 that is expert in squeezing customers? Is Oracle’s cloud technology less important  
25 to its revenues than its cloud promotion practices? Will Oracle ever reveal how  
26 much of its cloud sales are actually shelfware?

27 163. Oracle, however, continued to deny that these concerns had merit. For example, on  
28 May 22, 2018, *The Information* published a report titled “**Oracle’s Aggressive Sales Are  
Backfiring With Customers.**” In the report, the authors quoted an anonymous Oracle employee,  
who accused Oracle of coercing customers to “strike [cloud service] deals to avoid expensive  
audits of how they were using Oracle software.” The article also reported that Oracle had attempted

1 to use the tactic to coerce toy-maker Mattel, Guardian Life Insurance, and Southern California  
2 Edison into doing large cloud deals, but they refused, choosing instead to pay steeper penalties.  
3 The article further reported that, according to the employee, Mattel told Oracle that it “was ‘not  
4 strategic’ as a cloud partner” and chose to continue its relationship with Microsoft Azure.

5 164. Oracle denied *The Information’s* report, claiming it was based on “inaccurate  
6 accounts” fabricated by “anonymous sources or competitors” and stated that “Oracle, like virtually  
7 every other software company, conducts software audits in limited circumstances to ensure that  
8 our products are used as licensed. We pride ourselves in providing our existing 400,000 customers  
9 a variety of options to move to the cloud when they are ready. Oracle is grateful to its large and  
10 growing customer base and has no reason to resort to scare tactics to solicit business. *We are*  
11 *disappointed that The Information is presenting inaccurate accounts regarding a handful of*  
12 *customers, based on anonymous sources or competitors who seek to enhance their own*  
13 *consulting services.”*

14 **3. On June 14, 2018, JPMorgan Releases a Large-Scale CIO Survey**  
15 **Showing That Oracle Is “Trailing In Cloud Computing Plans”**

16 165. On June 14, 2018, JP Morgan issued a report that – contrary to Oracle’s statements  
17 to *The Information* and elsewhere – further indicated to the marketplace that Oracle’s cloud  
18 business was suffering as a result of its coercive tactics. Specifically, JPMorgan issued a report  
19 announcing it was downgrading Oracle shares to Neutral based on the results of “large-scale CIO  
20 survey,” in which the analysts ask “CIOs to rank the top 8 or 9 IT mega-vendors in terms of who  
21 will be most critical and indispensable to their IT environment in the future.”

22 166. JPMorgan reported that while, in the past Oracle “has been stable and received  
23 ~11% of the votes,” the Company’s standing in this latest poll dropped by *more than 40%* to a  
24 mere 6.5%. The analysts stated that these results made them “uncomfortable because the results  
25 of our CIO surveys over the years have been highly predictive” of sales trends. The JPMorgan  
26 analysts concluded:

27 [W]e ask the following: if the largest-scale CIO survey shows ORCL now has  
28 negative spending intentions; and ORCL is lagging in Digital Transformation  
projects; and ORCL is trailing in Cloud Computing plans; and its criticality as a



1 mega-vendor has fallen to new lows; and ORCL databases are being unplugged in  
2 favor of Microsoft and Amazon databases; and ORCL applications are being  
3 unplugged in favor of Salesforce and Workday applications; and customers are  
4 weary of ORCL's unpopular commercial tactics – then where is this business and  
5 this stock heading in the next couple of years?

6 167. JP Morgan further discussed the “Specific Reasons for Declining Oracle Spend,”  
7 stating that reasons that the CIOs moved away from Oracle included that “they do not like Oracle’s  
8 ‘business practices and the difficulty of working with them in the past.’” JP Morgan further stated  
9 that the CIOs are “moving off of Oracle Business Intelligence Cloud Service because they have  
10 not found value in it.”

11 168. On this news, the price of Oracle stock fell approximately 5%, from \$48.27 per  
12 share on June 13, 2018 to \$45.90 per share on June 14, 2018, on high trading volume.

13 **4. On June 19, 2018, Oracle Reports Additional Cloud Slowdowns  
14 And Stuns Investors By Announcing It Will No Longer Report  
15 Cloud Business Financial Results**

16 169. On June 19, 2018, Oracle held its fourth quarter 2018 earnings call with investors.  
17 On that call, Oracle shocked the market by announcing that it would no longer separately report  
18 financial results for its cloud business, and would, instead, consolidate those financial results into  
19 a combined “Cloud Services and License Support” line item so that investors could no longer see  
20 them. In addition, under pressure from analysts on the call, Catz disclosed total cloud revenue  
21 growth for the quarter had come in at a lackluster 21%, demonstrating that Oracle’s cloud business  
22 had slowed to crawl, and making clear the impetus behind the Company’s desire to hide its cloud  
23 results. Oracle also declined to provide separate guidance for cloud revenues going forward.  
24 PiperJaffray reported on June 20, 2018 that Oracle had informed it that the “reporting change was  
25 driven by Larry Ellison.”

26 170. As the market immediately recognized, Oracle’s decision to shield its cloud results  
27 from public view meant that the Company had something to hide, and that the welfare of that  
28 business was in jeopardy. In a June 20, 2018 report, William Blair analysts concluded that “it is  
an attempt to *pull the proverbial wool over investors’ eyes—particularly related to cloud sales,*”  
and was “the main factor driving the stock down in the aftermarket, given the importance of cloud  
services growth (into which investors now have less visibility) to the bull thesis.” RBC analysts

1 reported on June 19 that Oracle’s move was a “[r]adical change in disclosure,” while  
2 Oppenheimer analysts reported on June 20 that the change was “a *red flag*” that “masks visibility  
3 and raises concerns about the performance and trajectory of the cloud business.” JPMorgan  
4 analysts similarly reported on June 20 that “*Oracle’s sudden decision to discontinue the*  
5 *disclosure of detailed cloud revenue obfuscates one of the most important metrics to gauge the*  
6 *cloud transition story.*” (emphasis in original).

7 171. Analysts also reported that Oracle’s stated rationale for the move – namely, that it  
8 was hard to distinguish cloud revenue from more traditional on-premises revenue – was not  
9 credible. For instance, *TechCrunch* reported on June 20, 2018 that John Dinsdale, an analyst with  
10 Synergy Research, a firm that analyzes the cloud market, stated, “when a company chooses to  
11 reduce the amount of financial detail it shares on its key strategic initiatives, that is not a good  
12 sign. I think one of the justifications put forward is that is becoming difficult to differentiate  
13 between cloud and non-cloud revenues. If that is indeed what Oracle is claiming, *I have a hard*  
14 *time buying into that argument. Its competitors are all moving in the opposite direction.*”  
15 Confirming the point, *TechCrunch* reported that “the bigger players have been more open about  
16 this. For instance, in its most recent earnings report, Microsoft reported its Azure cloud revenue  
17 grew 93 percent. Amazon reported its cloud revenue from AWS was up 49 percent to \$5.4 billion  
18 in revenue, getting very specific about the revenue number.”

19 172. Other analysts agreed that Oracle’s explanation was not credible – and further  
20 reported that Oracle’s radical disclosure change undermined Defendants’ prior statements. For  
21 example, Deutsche Bank reported on June 20, 2018 that:

22 The decision to stop disclosing any key cloud metric is *at odds with Oracle’s own*  
23 *multi-year effort to pitch itself as a leading cloud vendor* and materially limits  
24 investor visibility into Oracle’s growth engine . . . . *We’re not convinced by*  
25 *Oracle’s explanation that the on-premise and cloud boundaries are blurring. . . .*  
This move implies that Oracle’s cloud growth is largely coming from existing  
database/apps migrations, not new logos or workloads . . . .

26 173. Similarly, on June 20, 2018, JMP analysts reported that, “We think it is worth  
27 remembering that, as little as three quarters ago on the F1Q18 earnings call, Oracle was focusing  
28 investors on cloud growth.”

1 174. Notably, JMP further reported that the dramatic deceleration in Oracle's cloud  
2 growth was driven by the Company's treatment of its customers:

3 We think Oracle would benefit from shifting its focus away from winning and  
4 toward customer success . . . . Last night, we spoke with an industry contact that  
5 underscored Oracle's lack of focus on customer success as he provided his  
6 perspective on ORCL's decision to deemphasize the cloud metrics. He stated: "**No  
one is re-upping. There was a big incentive to sell cloud – it was attached to  
contracting docs. Buy off but then it's up to you to use it. There was no customer  
success to say, 'Hey, you bought this, now let's get value from it.'**"

7 175. Similarly, *The Upper Edge* reported on June 27, 2018 that the fall-out from Oracle's  
8 coercive sales tactics was causing its plummeting cloud numbers. In an article entitled "What  
9 Oracle Doesn't Want You to Know," *The Upper Edge* reported that "[m]any analysts are  
10 speculating that the timing of this change [in financial reporting], and the fact that Oracle is being  
11 evaluated based on its cloud growth, suggests that it may have something to hide." The article  
12 stated that Oracle had "Poor Cloud Application Performance" and that "[w]e have worked with  
13 customers that have deployed Oracle's SaaS applications for a number of years and we have yet  
14 to hear a success story that did not require much more work than anticipated just to get the system  
15 running in production and stable, let alone delivering the expected business value." *The Upper  
16 Edge* noted that Oracle's "Cloud Deals [were] Manufactured by Duress:"

17 Oracle claims there is a potential compliance issue that will cost the customer  
18 millions of dollars. This can be done either after an audit has been completed, even  
19 though the compliance claim may be in dispute, or prior to initiating an audit based  
20 on some sort of claim that Oracle believes there is a compliance issue. Oracle  
21 creates a big fuss and may even threaten to terminate licenses or launch into a full-  
scale audit unless the fees are paid immediately. Then the Oracle sales rep steps in  
and says they can significantly reduce the compliance fees owed or eliminate the  
audit if the customer makes a purchase that includes some sort of cloud service.

22 176. Further, the article stated that when a customer needs to purchase additional  
23 licenses for on-premise products, the "sales rep steps in and says they can significantly improve  
24 the pricing if the deal includes a cloud services purchase. We have seen a number of customers  
25 sign up for cloud services with no intention of ever using them simply because the overall cost  
26 was lower when compared to buying just the additional on-prem licenses they required." *The  
27 Upper Edge* article went on to state that:  
28

1 The issue with these two scenarios is that these deals do not represent customer  
2 demand for Oracle's cloud solutions. ... These scenarios are what Oracle means  
3 when they refer to cloud sales to existing on-prem customers as new workstreams.  
4 It is code for an existing customer buying a cloud solution they did not require and  
5 that is not replacing a current Oracle on-premise licenses product set. Oracle's hope  
6 is that the customer will use the solution since they have the right to do so and will  
7 hopefully find value and renew and expand the service in the future. This is a key  
8 distinction between the true customer-driven demand vs. a coerced trial period that  
9 may lead to demand.

10 177. As a result of Oracle's revelations that its cloud business growth had ground to a  
11 near-halt, the price of Oracle stock fell approximately 7.5%, from \$46.27 per share on June 19,  
12 2018 to \$42.82 per share on June 20, 2018, on high trading volume.

## 13 **VI. ADDITIONAL ALLEGATIONS OF SCIENTER**

14 178. Numerous facts, in addition to those discussed above, support a strong inference  
15 that Defendants knew, or were deliberately reckless in not knowing, that Oracle's cloud growth  
16 and revenues were fueled by the improper and extortionate sales and audit practices detailed below.

### 17 **A. Defendants Knew And Had Access To Information Undermining Their 18 Statements to Investors**

19 179. Defendants knew and had access to information demonstrating that Oracle  
20 generated cloud revenue growth through audits and attached deals. As detailed above, numerous  
21 former Oracle employees, including FE 1, FE 3, and FE 7 explained that Defendants Hurd and  
22 Catz approved Oracle's engineered cloud deals through the DAS system. As these former Oracle  
23 employees explained, entries on DAS made clear whether a cloud deal was closed using the ABC  
24 scheme, as well as whether it was an attached deal. DAS entries specified whether a deal was  
25 audit-driven, whether LMS was engaged as part of the sales process, and whether steep discounts  
26 were requested as part of an attached deal. Moreover, multiple former Oracle employees  
27 independently confirmed that Defendants Hurd or Catz had to sign off on large deals and deals  
28 that included a steep discount, as virtually all attached deals did. FE 1 further stated that he would  
see Hurd's and Catz's names on approvals of "compliance" deals in the DAS system and in  
approval notifications that were released once Hurd or Catz signed off on the deal. Likewise, FE  
3 stated that 80% of FE 3's engineered deals went to Hurd's office for approval and that he  
personally had "audit cloud deals," clearly marked as such, that were approved by Hurd.

1 180. FE 1 also described presentations he prepared specifically for Hurd's consumption  
2 that "would very clearly say that LMS was engaged" on cloud deals and that "they were  
3 compliance deals." FE 2 similarly reported that presentations going to Hurd's direct reports  
4 showed that 90-95% of the Company's North American cloud sales had no use cases associated  
5 with them, demonstrating that they were not driven by actual customer need. FE 2 stated that  
6 "[a]mong all of Hurd's direct reports, there was absolute awareness that there were issues with the  
7 quality of the cloud revenue." FE 2 stated, "I saw presentations that went to Hurd's directs. I saw  
8 the info they were receiving about deal quality and it was absolutely something that was  
9 discussed."

10 **B. Prior To Making Their Class Period Misstatements And Omissions,**  
11 **Defendants Were Informed Of Allegations That Oracle Generated**  
12 **Artificial Cloud Revenues Through Coercive Audits And Sales Tactics**

13 181. Both prior to and during the Class Period, multiple sources informed Defendants of  
14 Oracle's illicit audit and sales activities designed to inflate the Company's cloud revenues. For  
15 example, as discussed above, on May 7, 2014, Clear Licensing representatives met with high-level  
16 Oracle executives, including Oracle's Senior Director Global Operations within LMS, and  
17 informed them of LMS's "questionable sales tactics," with "LMS activity leading to sales  
18 engagement." See ¶56. Later, on November 3, 2014, Clear Licensing sent Oracle's Senior  
19 Director Global Operations a written report providing the results of Clear Licensing's survey of a  
20 hundred Oracle customers, together with summaries of customer accounts bolstering Clear  
21 Licensing's findings of LMS's abusive audit and sales practices. *Id.* Thereafter, on January 6,  
22 2015, after having received no meaningful response from the Company, Clear Licensing sent a  
23 letter to Defendant Ellison and Oracle's Board, including Defendants Hurd and Catz, informing  
24 them of the customer survey results, expressing concern that Oracle's audits were being used to  
25 improperly generate cloud revenues, and warning them of Oracle's inability to meet its stated \$1  
26 billion cloud sales target next year if these practices continued to go unaddressed. See ¶57.

27 182. Defendants also knew and had access to media reports published prior to and during  
28 the Class Period, which the Company denied, detailing Oracle's coercive audit and sales practices.

1 For example, immediately following the public release of Clear Licensing’s January 6, 2015 letter,  
2 multiple media outlets and commentators published follow-up articles and reports about Clear  
3 Licensing Counsel’s “scathing report” and prediction “that Oracle will struggle to move to the  
4 cloud unless it changes its ways.” *See* ¶59. Months later, the financial press published additional  
5 reports recounting allegations from various sources, including unnamed Oracle customers, that the  
6 Company was misusing its “audit” process to generate artificial cloud revenues, including  
7 pressuring customers to buy “cloud products they don’t need.” *See* ¶60.

8 183. Defendants were further informed of allegations of Oracle’s coercive audit and  
9 sales tactics prior to the Class Period through the Chilean regulator FNE’s comprehensive  
10 investigation, which ultimately found that Oracle pushed cloud-based products to resolve audits  
11 even when the customer did not want cloud. *See* ¶135-146. Specifically, in September 2015, the  
12 FNE informed Oracle that it had opened an investigation into Oracle’s licensing and audit  
13 practices. *See* ¶137. During its investigation FNE specifically asked Oracle for information  
14 concerning its auditing practices and attached deals, including: (i) documents or internal  
15 presentations related to sales as a result of an audit; (ii) policies related to the promotion of Oracle  
16 products to customers negotiating with LMS; and (iii) information concerning the amount of sales  
17 generated through audits or “true up” processes. *See* ¶140. That Defendants made their  
18 misstatements and omissions in the midst of a regulatory investigation and in the face of specific  
19 accusations of wrongdoing further supports the scienter inference.

20 **C. Defendants Specifically Denied The Allegations That They Were Using**  
21 **Audits To Close Cloud Sales**

22 184. Both prior to and during the Class Period, Defendants were also directly asked  
23 about allegations regarding the Company’s abusive sales and auditing practices to boost cloud  
24 revenue, and in response, they denied that there was any misconduct and falsely attributed the  
25 Company’s cloud business growth to legitimate business factors.

26 185. As set forth above, prior to making their Class Period misstatements and omissions,  
27 Defendants were informed by, among others, Clear Licensing, media reports and the FNE of  
28 allegations of Oracle’s improper licensing and audit practices. However, with each of these

1 sources, Oracle denied the accusations. Indeed, Oracle told investors as early as June of 2015 that  
2 media reports regarding the Company’s improper auditing practices were “absolutely not true” and  
3 “conspiracy rumor,” assuring that “[i]t would be wrong to force a [customer] to do something  
4 that’s against their will.”

5 186. Defendants’ pattern of making such false denials continued throughout the Class  
6 Period, including in response to analysts’ specific inquiries. For example, on May 9, 2017, an  
7 analyst questioned Defendant Bond about the importance of audits as a driver of revenue growth  
8 and whether he could provide “some sort of indication as to what percentage of revenue and margin  
9 is associated with auditing practices of customers.” In response, Defendant Bond denied that the  
10 Company’s audit practices were driving its revenue growth, stating that “[t]his is one of those  
11 things where – gets talked about a lot. And I think this is one of those things where the story is a  
12 lot bigger than the realities.” Defendant Bond further assured investors that Oracle did not use  
13 extortive audits, stating that “we try to do it as best we can, in as gracious [a] way as we can” and  
14 that “as we go to cloud, we don’t have to worry about that anymore.”

15 187. Similarly, during the Class Period Defendants repeatedly denied media reports of  
16 Oracle’s abusive auditing practices, consistently characterizing them as “inaccurate accounts.” For  
17 example, following a May 22, 2018 report by *The Information* that Oracle used the threat of audits  
18 to drive cloud sales, the Company publicly responded that it had “no reason to resort to scare  
19 tactics to solicit business” and was “disappointed that The Information is presenting inaccurate  
20 accounts regarding a handful of customers, based on anonymous sources or competitors who seek  
21 to enhance their own consulting services.”

22 188. Likewise, Defendants made further false denials by repeatedly attributing the  
23 Company’s “astonishing” cloud business growth to legitimate business factors and assuring  
24 investors that Oracle’s “hypergrowth” in the cloud revenue was sustainable. For example, on the  
25 September 14, 2017 earnings call, Defendant Hurd claimed that the Company’s cloud growth was  
26 due to the fact that “[w]e’re better – our products are better. Our sales force is better. Our ability  
27 to implement is better.” Similarly, at the November 7, 2017 industry conference, Defendant Bond  
28 explained why customers were purportedly moving from on-premise to cloud, stating that “from



1 a cost standpoint as well as an innovation standpoint, there's a lot to like about cloud for the  
2 customer. And I think this is one of the biggest drivers of why you're seeing customers really  
3 excited about this even if it's still early." Finally, throughout the Class Period, Defendants also  
4 falsely denied that Oracle's cloud growth was the product of short-term sales tactics, including  
5 when Catz stated on the June 21, 2017 earnings call that cloud revenue growth was "absolutely  
6 not a 1-year phenomena."

7 189. Defendants' repeated denials of wrongdoing in response to repeated analyst  
8 questions and media reports, coupled with their false assurances to investors of the Company's  
9 legitimate sales practices, further support a strong inference of scienter.

10 **D. Oracle's Use Of Engineered Deals To Drive Cloud Sales Was Widespread**  
11 **Throughout The Company, Occurring Across Continents And In Multiple**  
12 **Different Business Units**

13 190. As discussed above, numerous senior former sales executives in Oracle's North  
14 American operations (including FE 2, FE 3, FE 4, FE 6, FE 9, and FE 5), Middle East and Africa  
15 operations (FE 1), and European operations (FE 7) all gave highly corroborative accounts detailing  
16 the widespread use of the ABC scheme and attached deals to drive significant cloud revenue for  
17 Oracle. These accounts describe the same deal mechanics implemented widely across the  
18 Company by the entirety of Oracle's sales personnel, with detailed information about the  
19 substantial volume of ABC and attached deals all flowing towards Hurd and Catz (including  
20 through the DAS system) for years at a time.

21 191. Moreover, Oracle's deployment of the ABC deals required a high degree of  
22 coordination between sales and LMS departments all over the world. The high degree of overlap,  
23 replication, and coordination in the implementation of the ABC and attached deal scheme, as well  
24 as the ubiquitous use of these tactics by an army of Oracle employees over different departments  
25 in different parts of the world for years on end, further strengthens the inference that Defendants  
26 knew or, at minimum, were deliberately reckless in not knowing of the misstated and omitted facts.

1           **E. Oracle Repeatedly Changed The Way It Reported Cloud Revenue During**  
2           **The Class Period, Underscoring Its Efforts To Obscure Declining Growth**

3           192. Defendants' attempt to conceal Oracle's deteriorating cloud revenues further  
4 supports the scienter inference. As discussed above (*see* ¶¶169-77), in June 2018, Defendants  
5 dramatically changed Oracle's financial reporting of cloud revenues. Specifically, Oracle stopped  
6 separately reporting financial results for its cloud business, instead consolidating those results into  
7 its legacy "on-premises" business. In so doing, they attempted to – and did – mask the Company's  
8 deteriorating cloud performance, which was no longer powered by a huge volume of deals  
9 completed through coercive sales tactics and audits.

10           193. Oracle's sudden and drastic change in its financial reporting is particularly  
11 suspicious when considered in the context of Oracle's prior decisions to report separately their  
12 cloud and non-cloud revenues. In September 2015, the Company heralded its decision to  
13 separately report its cloud and non-cloud revenues, as it would "better reflect how we look at the  
14 Company now that cloud has become a significant contributor to revenue." Then, in June 2017  
15 the Company announced that it would start disclosing additional details regarding its "cloud  
16 revenues," including breaking out cloud SaaS revenue separately from cloud PaaS/IaaS revenue.  
17 Oracle touted this additional "cloud" disclosure at the time as a "significant improvement in our  
18 financial reporting to align with how we are running the business now" because the "cloud has  
19 become our predominant growth vehicle." That Oracle would suddenly eliminate its critical  
20 "cloud" revenues disclosures – just twelve months after introducing additional disclosures to  
21 "significant[ly] improv[e]" in its financial reporting – further strengthens the scienter inference.

22           194. Indeed, Oracle's top competitors – including Amazon, Microsoft, and IBM –  
23 separately reported (and continue to separately report) their "cloud" and "non-cloud" revenues,  
24 ensuring that investors are given "a clear view of [their] cloud growth." Such disclosure is valuable  
25 because "[s]oftware is moving to the cloud, and without explicit, easy to understand, non-changing  
26  
27  
28

1 data, it is going to be difficult for investors to correctly appraise the more valuable recurring Cloud  
2 business.”<sup>38</sup>

3 195. Analysts’ contemporaneous reaction to Oracle’s about-face change in its financial  
4 reporting further demonstrates its suspicious nature. William Blair concluded the change was “an  
5 attempt to pull the proverbial wool over investors’ eyes—particularly related to cloud sales.”  
6 Oppenheimer identified the reporting change as “a red flag” that “masks visibility and raises  
7 concerns about the performance and trajectory of the cloud business.” JPMorgan similarly  
8 characterized the change as an attempt to “obfuscate[] one of the most important metrics to gauge  
9 the cloud transition story.” and *The Upper Edge* characterized the change as “suggest[ing] that  
10 [Oracle] may have something to hide.” Analysts also correctly found Oracle’s stated rationale for  
11 the move – i.e., that it is difficult to distinguish cloud revenue from traditional on-premises revenue  
12 – dubious, stating that they had “a hard time buying into that argument” and that they were “not  
13 convinced by Oracle’s explanation,” particularly given Oracle’s “multi-year effort to pitch itself  
14 as a leading cloud vendor” and that Oracle’s cloud competitors were all reporting these figures.

15 **F. Defendants’ Statements Touting Oracle’s Cloud Growth Concerned The**  
16 **Single Most Important Issue Facing The Company During The Class**  
17 **Period**

18 196. Oracle’s “move to cloud” was, as Defendant Catz publicly told investors, “the  
19 biggest and most important opportunity in our Company’s history.” Defendant Catz echoed these  
20 sentiments at Oracle OpenWorld in the beginning of the Class Period, stating that “[m]oving to the  
21 cloud [wa]s the single largest opportunity and we have to face it.”<sup>39</sup> Defendant Hurd likewise  
22 stated that “[t]his movement to cloud, this is an inevitable destination as opposed to an interesting  
23 turn,”<sup>40</sup> and that “[t]he move to the cloud is not just a technical thing; this is a business model,

24 \_\_\_\_\_  
25 <sup>38</sup> Jordan Novet, “Oracle Falls 7% After Company Reduced Visibility Into Its Cloud Business,”  
*CNBC* (June 20, 2018).

26 <sup>39</sup> Sohini Bagchi, “Digital India Driving Growth For Oracle: CEO Safra Catz,” *CXOtoday.com*  
27 (May 9, 2017).

28 <sup>40</sup> Stephanie Condon, “Oracle CEO Mark Hurd: AI Shouldn’t be a standalone application,” *ZDNet*  
(October 2, 2017).

1 generational change about how we think about IT.”<sup>41</sup> Defendant Hurd further stated that the cloud  
2 market presented a “tremendous opportunity for us to grow and blow way past \$10 billion” in  
3 revenue.<sup>42</sup> Likewise, Defendant Ellison told investors during the Company’s November 2017  
4 annual shareholders meeting that “[w]e expect the bulk of our business going forward, and the  
5 bulk of our growth will be driven by our public cloud business.”

6 197. Oracle’s need to generate revenues through its new cloud offerings was particularly  
7 acute because demand for its on premises products was declining. Wall Street recognized the  
8 importance of Oracle’s transition to the cloud. As the USA Today explained, “Oracle’s future and  
9 relevance [wa]s pinned on its ability to become a bigger player in cloud.”<sup>43</sup> In December 2017,  
10 *Forbes* further described how “Oracle’s cloud segment has been the only revenue stream to witness  
11 growth in recent years,” adding that the “trend is likely to continue in the coming years.”<sup>44</sup> Media  
12 reports additionally stated that the “cloud has become a matter of existential importance to Oracle  
13 as its legacy business of selling software licenses and hardware products erodes in the face of a  
14 growing enterprise preference for usage-based application and infrastructure subscriptions.”<sup>45</sup>  
15 Analysts further explained that “[w]ithout aggressive action to significantly increase non-database  
16 [i.e., cloud] revenue, we do not believe Oracle can offset the oncoming decline in commercial  
17 database revenue fast enough to maintain its present valuation,” adding that “Oracle needs an even  
18 more radical and rapid organizational and cultural shift toward ‘cloud-first.’”<sup>46</sup> Finally, further  
19 demonstrating its importance to the Company and its investors, Oracle’s cloud revenues were

20  
21 <sup>41</sup> “Mark Hurd Chief Executive Officer” Oracle NetSuite company profile.

22 <sup>42</sup> Anita Balakrishnan, “Oracle CEO pushes back on challenge from Salesforce: ‘Are you kidding  
me?’” *CNBC* (May 4, 2017).

23 <sup>43</sup> John Swartz, “Oracle’s Mark Hurd builds a cloud arsenal to take on Amazon,” *USA Today* (April  
24 26, 2017).

25 <sup>44</sup> Trefis Team, “Oracle Earnings Preview: Cloud-Based Segments To Continue To Drive  
Growth,” *Forbes* (December 12, 2017).

26 <sup>45</sup> Kurt Marko, “Oracle Cloud World epiphany: Focusing on applications and data, not  
27 infrastructure. Yet.” *diginomica* (January 24, 2017).

28 <sup>46</sup> John Freeman et al., “The Death Of The Commercial Database: Oracle’s Dilemma,” *Seeking  
Alpha* (February 10, 2017).

1 discussed by Defendants and investors on every earnings call during the Class Period, occupying  
2 the vast majority of the executives' discussion and analyst inquiry.

3 198. Given the "existential" import of cloud to Oracle and its future, Defendants knew  
4 – or were deliberately reckless in not knowing – that its cloud revenues were driven by illusory  
5 "sales" completed through coercive audits and attached deals.

6 **G. Defendants Stated That They Were Deeply Focused On Oracle's Cloud**  
7 **Revenues**

8 199. Defendants stated that they were acutely focused on the Company's cloud revenues.  
9 Beginning in late 2012, Defendant Ellison stated that "over the next couple of years senior  
10 management down to individual programmers and sales people are focused on one thing: selling  
11 applications in the cloud, selling our platform in the cloud and selling our infrastructure in the  
12 cloud," echoing that the Company was "laser-light focused" on cloud.<sup>47</sup> A year later, Defendant  
13 Hurd reinforced to investors that "[w]e are very focused on the cloud."<sup>48</sup> Once again, in 2016,  
14 Defendant Catz told investors that, "as you know, our focus is now on cloud" and that "[w]e had  
15 leading products to begin with, but we started and rewrote them all, focused exclusively – really  
16 focused on the cloud." During the Class Period, the Company's executives continued to assure  
17 investors that they were singularly focused on "cloud revenues," with Defendant Hurd telling  
18 investors that his "focus" was on the "transformation to the cloud."<sup>49</sup> That Defendants were, by  
19 their own admissions, "very focused" and "laser-focused" on the Company's cloud business and  
20 revenues further strengthens the scienter inference.

21  
22  
23  
24 <sup>47</sup> Steffanie Marchese, "CNBC EXCLUSIVE: CNBC TRANSCRIPT: ORACLE CEO LARRY  
25 ELLISON SITS DOWN ONE-ON-ONE WITH MARIA BARTIROMO TODAY ON CNBC,"  
*CNBC* (October 2, 2012).

26 <sup>48</sup> Rachel King, "Oracle's Hurd defends cloud strategy in light of exec shuffle," *ZDNet* (September  
27 29, 2014).

28 <sup>49</sup> Steven Bertoni, "PODCAST: Oracle CEO Mark Hurd On How A Tech Giant Can Stay Nimble  
and Bet Big On Future Trends," *Forbes* (February 27, 2018).

**H. Defendant Kurian Sold Hundreds Of Millions Of Dollars' Worth Of Oracle Stock During The Class Period**

200. Defendant Kurian was, by his own account, responsible for leading Oracle's product transformation from on-site products to cloud services. *See* ¶33. At the same time that Defendants were touting the Company's cloud business, Kurian – who was deeply attuned to the true sources of Oracle's cloud revenues – was selling millions of his personal shares. Indeed, during the Class Period, Defendant Kurian exercised his options and sold nearly 4 million shares, reaping over **\$191 million** in gross proceeds from insider sales.

201. Defendant Kurian's sale transactions, which were made over the open market and not pursuant to any 10b5-1 plan, are set forth below:

Defendant	Transaction Dates	Shares Sold	Price Per Share	Total Value (\$)
KURIAN	07/18/17	750,000	\$50.46	\$37,843,275
KURIAN	01/18/18	1,500,000	\$50.29	\$75,433,950
KURIAN	01/18/18	200,000	\$50.29	\$10,057,860
KURIAN	04/23/18	137,843	\$46.13	\$6,358,698
KURIAN	04/26/18	300,000	\$46.06	\$13,818,000
KURIAN	04/27/18	25,600	\$46.06	\$1,179,136
KURIAN	04/30/18	57,155	\$46.00	\$2,629,130
KURIAN	05/02/18	91,888	\$45.85	\$4,213,065
KURIAN	05/02/18	253,877	\$45.85	\$11,640,260
KURIAN	05/03/18	333,637	\$45.15	\$15,063,711
KURIAN	05/04/18	300,000	\$45.15	\$13,545,000
<b>Kurian Totals</b>		<b>3,950,000</b>		<b>\$191,782,084</b>

202. Kurian's sales, both individually and collectively, were unusual and suspicious in size and timing. For instance, in the first transaction that occurred on July 18, 2017, Kurian sold 750,000 shares at over \$50 per share, reaping over \$37.8 million in gross proceeds. The sale – which represented nearly 7% of Kurian's entire holdings – was made shortly after the Company announced positive fourth quarter fiscal year 2017 results on June 21, 2017, including that cloud

1 revenues had increased by 58% to \$1.4 billion, that sent the Oracle's shares to a historic high for  
2 the Company.

3 203. Similarly, with regard to the second transaction on January 18, 2018, Kurian sold  
4 1.7 million shares again at a share price of over \$50 for gross proceeds of approximately \$85.5  
5 million. This sale represented about 15% of Defendant Kurian's inventory at that time. The sale  
6 was made toward the end of the third quarter of fiscal year 2018, the period for which Defendants  
7 would later disclose – *after* Kurian unloaded his personal shares – that Oracle's cloud revenue  
8 growth had stagnated and that the Company forecasted significantly slower sales growth for its  
9 cloud business than its competitors. When Oracle ultimately revealed this negative news to  
10 investors on March 19, 2018, the Company's shares plummeted by over 9.4% to \$47.05. Thus,  
11 Defendant Kurian's January 18, 2018 sale allowed him to avoid this loss and instead cash out on  
12 the artificially inflated stock price resulting from Defendants' misrepresentations and omissions.

13 204. Likewise, Kurian's flurry of sales made over the course of 10 trading days in late  
14 April and early May 2018, amounted to 1.5 million shares, or 15.6% of Kurian's holdings, for  
15 gross proceeds of over \$68 million. Defendant Kurian made these sales at the end of the fourth  
16 quarter of fiscal year 2018, the period for which the public would later learn – *after* Kurian dumped  
17 his personal shares on the market – that Oracle's cloud growth had been artificially inflated as a  
18 result of the improper sales tactics described herein. Significantly, Kurian's sales were executed at  
19 a weighted average price of \$45.63, a stark difference from the close price at the end of the Class  
20 Period on June 20, 2018 of \$42.82, thereby yielding Kurian an additional several million dollars  
21 as a result of Defendants' fraud.

22 205. Finally, Defendant Kurian's sales were inconsistent with his prior trading history.  
23 Defendant Kurian sold a higher percentage of his available shares during the Class Period than in  
24 the previous period of the same length. Indeed, Defendant Kurian sold **42.5%** of his available  
25 shares during the Class Period – which was nearly three-times the percentage of shares that he sold  
26 in the prior period of equal length. Specifically, during the prior period of the same length  
27 (December 8, 2015 to March 14, 2017), Kurian sold only 1,104,300 shares, or **15.5%** of his  
28 available shares, for gross proceeds of approximately \$45.7 million.



1           206. Defendant Kurian’s unusually timed and outsized personal stock sales provide  
2 further support for the scienter inference.

3           **I. The Executive Defendants Were Directly And Extensively Involved In**  
4           **Developing And Maintaining Oracle’s Cloud Business**

5           207. Each of the Executive Defendants was directly and extensively involved in  
6 developing and maintaining Oracle’s cloud business; the implementation and execution of Oracles’  
7 licensing, audit and sales policies and practices; and the day-to-day operations of the Company.

8           (a) **Defendant Catz** played a key role in designing and implementing Oracle’s  
9 strategy to transition its customers from on-premises software products to the Company’s cloud  
10 offerings. Catz spoke frequently to the financial press about Oracle’s election to “move to the  
11 cloud,” characterizing the strategy as “a generational shift in technology that [wa]s the biggest and  
12 most important opportunity in our Company’s history.” In press releases and earnings calls, Catz  
13 frequently spoke about and held herself out as knowledgeable to both investors and analysts about  
14 the Company’s reported financial results and forecasts, including Oracle’s “hypergrowth . . . in the  
15 cloud,” customer adoption of these products and sales pipeline, the factors driving the Company’s  
16 cloud revenue, growth and forecasts, and whether such revenue and profitability were sustainable.  
17 Later, Catz spoke about and held herself out as knowledgeable about the principal reasons for  
18 reduced guidance in cloud revenue growth. Catz, who has served as a Company executive for the  
19 past 20 years and a member of the Company’s Board since 2001, was also heavily involved in the  
20 day-to-day operations of the Company. Indeed, Defendant Ellison described Catz as “[v]ery  
21 details-oriented,” “the No. 2 person for some time,” and “our first- ever, de facto chief operating  
22 officer.” In 2005, Defendant Ellison stated “[i]f I dropped dead tomorrow, Safra Catz would be  
23 the CEO of Oracle.” Catz’s active involvement in Oracle’s day-to-day operations is further  
24 corroborated by former Oracle employee accounts. Former Oracle employees’ accounts  
25 demonstrate that Catz had personal knowledge as to how Oracle’s cloud revenue was being  
26 generated by its sales team, including the specific volume of Oracle’s revenue generated through  
27 engineered deals such as Audit, Bargain, Close deals. *See, e.g.*, ¶¶110, 134. In addition, Catz was  
28 actively involved in reviewing and approving specific sales transactions, including engineered

1 deals. *Id.* Former employees reported that Catz reviewed and approved sales in excess of \$5  
2 million, as demonstrated by entries in Oracle’s DAS database and internal documents, and that  
3 those sales included engineered deals. *Id.* Former employees stated that the DAS entries for deals  
4 approved by Catz clearly indicated whether approved deals were audit-driven or attached. *See*  
5 ¶¶110, 111, 134. In addition, Catz signed and certified the purported accuracy of each of the  
6 Company’s quarterly and annual filings during the Class Period.

7  
8 (b) **Defendant Hurd** also played a key role in designing and implementing  
9 Oracle’s strategy to transition its customers from on premises software products to the Company’s  
10 cloud offerings. Hurd repeatedly touted his “focus” on Oracle’s transformation to the cloud and  
11 the Company’s cloud products. According to the Company’s website, Hurd “manages corporate  
12 direction and strategy at Oracle, facilitating company activity in consulting, sales, marketing,  
13 alliances and channels, and support.” Hurd’s bio page further represents that he “helped shift the  
14 long-term strategy of the company toward the cloud” and “[a]dapting to this new business model.”  
15 Hurd also spoke frequently to the financial press about Oracle’s transition to the cloud, affirming  
16 that the Company was “determined to compete on every level of the cloud feature for feature.”  
17 Hurd further claimed to have familiarity with the quality of Oracle’s cloud products, their  
18 importance to the Company’s business prospects and implementation of sales strategies with  
19 respect to such products, including ERP. For example, on the September 14, 2017 earnings call,  
20 Defendant Hurd attributed the Company’s cloud growth to the fact that “[w]e’re better – our  
21 products are better. Our sales force is better. Our ability to implement is better.” Throughout the  
22 Class Period, Hurd similarly spoke about and held himself out as knowledgeable to both investors  
23 and analysts about the Company’s reported financial results and forecasts, including Oracle’s  
24 growth rates for its cloud business and drivers for such growth. Hurd too was actively involved in  
25 Oracle’s day-to-day operations. Hurd stated that he “stay[s] close to the action,” earning him the  
26 description as an executive that “digs into details and is a hands-on manager that examines every  
27 alternative.” Hurd’s hands-on management style is further supported by former Oracle employee  
28 accounts. Former Oracle employees’ accounts demonstrate that Hurd had personal knowledge as

1 to how Oracle's cloud revenue was being generated by its sales team, including the volume of  
2 Oracle's revenue generated through engineered deals such as Audit, Bargain, Close deals. *See*  
3 ¶¶110-114, 133-34. Former employees similarly reported that presentations delivered and prepared  
4 for Hurd made clear that Oracle was using engineered deals to drive cloud sales. These  
5 presentations "would very clearly say that LMS was engaged" on cloud deals, that those deals  
6 were "compliance deals," and that 90-95% of the Company's North American cloud sales had no  
7 legitimate "use case." *Id.* In addition, Hurd was actively involved in reviewing and approving  
8 specific sales transactions, including engineered deals. Former employees reported that Hurd  
9 reviewed and approved sales in excess of \$5 million, as demonstrated by entries in Oracle's DAS  
10 database and internal documents, and that those sales included engineered deals. *Id.* Former  
11 employees stated that the DAS entries for deals approved by Hurd clearly indicated whether  
12 approved deals were audit-driven or attached. *See* ¶¶110, 111, 134. In addition, in Hurd's role as a  
13 Board Director, he corresponded with industry participants regarding Oracle's licensing, audit and  
14 sales practices, and the letter from Clear Licensing's Counsel was addressed to him as a Board  
15 member. *See* ¶¶57, 58. In addition, Hurd signed and certified the purported accuracy of each of  
16 the Company's quarterly and annual filings during the Class Period.

17  
18 (c) **Defendant Ellison** co-founded Oracle, was its longtime CEO and Board  
19 Chairman, and continues to remain actively involved in the Company's day-to-day operations as  
20 its Chief Technology Officer and one of its Board Directors. In public filings, Oracle states that  
21 Ellison "continues to lead and oversee our product engineering, technology development and  
22 strategy" and his "familiarity with and knowledge of [Oracle's] technologies and product offerings  
23 are unmatched." Ellison's active involvement in designing and implementing Oracle's strategy to  
24 transition its customers from on premise software products to the Company's cloud offerings is  
25 confirmed by Defendant Catz who credited Ellison as "le[ading] the transformation to the cloud,"  
26 and has stated that Ellison is still "in charge" at Oracle even after becoming the Company's CTO  
27 in 2014, noting "don't let titles fool you." Ellison also regularly spoke to the financial press about  
28 Oracle's pivot to the cloud. Ellison further claimed to have familiarity with the quality of and

1 customer experience with Oracle’s cloud products. Ellison likewise regularly spoke about and  
2 held himself out as knowledgeable to both investors and analysts about the Company’s reported  
3 financial results and forecasts, including Oracle’s growth rates for its cloud business and drivers  
4 for such growth, as well as customer renewal rates. Ellison also directed the manner in which  
5 Oracle’s financials would be reported, including making the decision to no longer separately report  
6 cloud revenues in June 2018. In addition, in Ellison’s role as a Board Director, Ellison  
7 corresponded with industry participants regarding Oracle’s licensing, audit and sales practices, and  
8 the letter from Clear Licensing’s Counsel was addressed to him. *See* ¶¶57, 58. In addition, Ellison  
9 signed the Company’s 2017 Annual Report as a member of the Company’s Board of Directors.

10  
11 (d) **Defendant Kurian** by his own account, “led [the] transformation of  
12 Oracle’s products with [the] introduction of leading suite of Cloud Services over 10 years.” Market  
13 commentators similarly recognized Kurian’s critical role in Oracle’s cloud transition, noting  
14 “Kurian’s chief responsibility has been to transition Oracle’s traditional software -- which usually  
15 sits on corporate clients’ own servers – to the cloud-computing age.”<sup>50</sup> Kurian was actively  
16 involved in carrying out the day-to-day business associated with Oracle’s cloud products. Kurian’s  
17 colleagues described him as a hands-on manager, stating that he “likes to get involved in the  
18 minutia of various projects” and “does not sufficiently delegate responsibility.” *See* ¶33. Kurian  
19 also dictated the new features Oracle added to existing cloud products. At press and industry  
20 conferences, Kurian frequently spoke about and held himself out as knowledgeable about the  
21 Company’s cloud business, including its business partners, “tremendous growth,” existing demand  
22 and new customers.

23 (e) **Defendant Bond** oversaw Oracle’s investor relations and regularly spoke  
24 to investors about Oracle’s business and the sources of its cloud revenues, including the driving  
25 factors for customers switching from on-premises to cloud, Oracle’s cloud growth and customer  
26 renewals. Bond also repeatedly discussed and held himself out as knowledgeable about the

27  
28 <sup>50</sup> “Oracle’s Kurian Is Said to Be at Odds With Ellison on Cloud,” *DataCenter Knowledge* (Sep.  
12, 2018).

1 propriety of Oracle’s licensing, auditing and sales practices, including by continually responding  
2 to media reports and analyst inquiries regarding the Company using audits to boost cloud sales.

3 (f) **Defendant Miranda** was directly involved in operations, reporting, and  
4 investor relations, as well as executing on the Company’s strategic initiatives with respect to its  
5 cloud product suite. The Company’s website acknowledges that Miranda was “responsible for  
6 leading all aspects of product strategy, product development, and product delivery for the entire  
7 portfolio of Oracle Applications.” Oracle’s website further states that “Miranda’s primary focus  
8 is on delivering the industry’s most complete, proven, and innovative set of cloud solutions.”  
9 Miranda also publicly claimed to have knowledge about the quality and features of Oracle’s cloud  
10 products. Miranda also frequently spoke to investors about Oracle’s cloud business, professing to  
11 know the reasons why customers were purportedly choosing Oracle’s cloud products.  
12

13 208. The Executive Defendants’ deep involvement in the Company’s operations and  
14 cloud business in addition to the many other factors discussed above further strengthens their  
15 scienter inference.

16 **VII. DEFENDANTS’ MATERIALLY FALSE AND MISLEADING STATEMENTS AND**  
17 **OMISSIONS**

18 **A. Defendants’ Materially False and Misleading Statements and Omissions**  
19 **During Oracle’s Fiscal Third Quarter 2017**

20 209. The Class Period begins on March 15, 2017. On that day, Oracle issued a press  
21 release announcing its financial results for the third quarter of fiscal year 2017, and filed that press  
22 release with the SEC on Form 8-K. The press release stressed the Company’s growing cloud  
23 revenue, stating that, “Total Cloud Revenues, including infrastructure as a service (IaaS), were  
24 \$1.2 billion, up 62% in U.S. dollars [year-over-year] and up 63% in constant currency.”

25 210. Oracle’s March 15, 2017 press release also quoted Catz, who emphasized Oracle’s  
26 “hypergrowth” in cloud – including 85% for two key cloud businesses, SaaS and PaaS – and the  
27 positive impact of this volume growth on “nearly every important non-GAAP business metric,”  
28 including both cloud and total margins:

1       The *hyper-growth we continue to experience in the cloud has rapidly drive both*  
 2       *our SaaS and PaaS businesses to scale . . . .* [O]ur SaaS and PaaS businesses grew  
 3       at the *astonishing rate of 85%* in Q3. . . . *Our new, large, fast growing, high-*  
 4       *margin cloud businesses are driving Oracle’s total revenue and earnings up and*  
 5       *improving nearly every important non-GAAP business metric you care to inspect;*  
 6       total revenue is up, margins are up, operating income is up, net income is up, EPS  
 7       is up. Take a look. Q3 was a very strong quarter.

8       211. These statements were materially false and misleading when made. It was  
 9       misleading for Defendants to report that Oracle’s cloud revenues were \$1.2 billion, and to state  
 10       that Oracle’s cloud business had experienced “hypergrowth,” including 62% growth in total cloud  
 11       revenue year -over-year and “astonishing” 85% year-over-year growth in SaaS and PaaS while  
 12       failing to disclose that: (1) a material portion of the cloud revenue was produced through  
 13       “financially engineered deals” created by Oracle’s use of the coercive “Audit, Bargain, Close” and  
 14       “attached” deal tactics; (2) the revenue produced through these deals was artificial because it did  
 15       not result from true purchases of Oracle’s cloud products, but rather resulted from clients  
 16       purchasing a discount on audit penalties or on-premises products; and (3) consequently, a material  
 17       portion of the reported cloud revenue and revenue growth did not consist of true cloud sales, and  
 18       was not sustainable.

19       212. Also on March 15, 2017, Oracle held its fiscal third quarter 2017 earnings  
 20       conference call. On that call, Catz trumpeted Oracle’s achievement of a key milestone in cloud,  
 21       namely that cloud growth was now outpacing declines in the legacy on-premises business:

22       Our pivot to the cloud is now clearly in full swing. *We continue to see outside*  
 23       *growth rates in our cloud business, especially when compared with our key*  
 24       *competitors who are all seeing slowing growth; but more importantly, the increase*  
 25       *in revenue from our cloud business has overtaken new software license declines*  
 26       *on an annual basis . . . .*

27       213. On that same call, Hurd also highlighted Oracle’s cloud growth, stating, “Cloud  
 28       revenue was up 72% and were now at an annualized \$5 billion run rate . . . . SaaS/PaaS revenue  
 29       was up 86%.” Hurd further stated that Oracle was “*the fastest-growing scale cloud business in*  
 30       *the world . . .*”

31       214. Finally, on Oracle’s March 15, 2017 earnings call, Ellison also told investors that  
 32       Oracle’s cloud business was “growing rapidly.” Ellison stated, “*SaaS and PaaS are large, rapidly*  
 33       *growing businesses for us. Together SaaS and PaaS grew 85% this past quarter,* but soon

1 infrastructure as a service will be growing even faster, and before long infrastructure as a service  
2 will become Oracle's largest cloud business. In summary, *all of Oracle's cloud businesses are*  
3 *growing rapidly ....*"

4 215. These statements were materially false and misleading when made. It was  
5 misleading for Defendants to state that Oracle was seeing "outside growth rates in its cloud  
6 business," was "the fastest-growing scale cloud business in the world," and was "growing rapidly,"  
7 and to report revenue growth rates noted above, while failing to disclose that (1) a material portion  
8 of the cloud revenue was produced through "financially engineered deals" created by Oracle's use  
9 of the coercive "Audit, Bargain, Close" and "attached" deal tactics; (2) the revenue produced  
10 through these deals was artificial because it did not result from true purchases of Oracle's cloud  
11 products, but rather resulted from clients purchasing a discount on audit penalties or on-premises  
12 products; and (3) consequently, a material portion of the reported cloud revenue and revenue  
13 growth did not consist of true cloud sales, and was not sustainable.

14 216. Analysts and investors reacted positively to Defendants' misleading statements  
15 about Oracle's cloud growth. For instance, a Cannacord analyst report dated March 15, 2017,  
16 stated that "Oracle, as it always does, spoke bullishly about its push into IaaS to counter Amazon  
17 and for now investors are believers." A Macquarie analyst report dated March 15, 2017 stated that  
18 "Oracle reported a solid third quarter, one of its best reports in years, even as the co. heads towards  
19 the tipping point in its cloud transition when cloud growth and margin scale are offsetting declines  
20 in new license revenues." Similarly, a Barclays analyst report dated March 16, 2017 stated "An  
21 Inflection Point? Oracle has had a tough transition to the cloud. However, management is now  
22 guiding for double-digit EPS growth in FY18 (partly helped by cost benefits from the recent  
23 hardware restructuring) and talks about increasing momentum around its IaaS business." A BTIG  
24 analyst report dated March 16, 2017 stated of Oracle's delivered strong F3Q17 results, that "we  
25 are continuing to see signs that we are at a material inflection point" in the Company's transition  
26 to cloud, and we "expect to see meaningful earnings growth in FY18 for the first time in three  
27 fiscal years" as a result of Oracle's "strong cloud revenue growth."



1           217. As a result of Defendants’ representations, Oracle’s stock price significantly  
2 increased from \$41.70 on March 15, 2017 to \$44.29 on March 16, 2017. Deutsche Bank reported  
3 on March 16, 2017 that “[t]he *key catalyst* for the after-market rally in the stock is the Cloud  
4 growth.”

5           218. On March 17, 2017, Oracle filed its financial results for the third quarter of fiscal  
6 2017 with the SEC on Form 10-Q. Oracle’s March 17, 2017 Form 10-Q was signed by Defendants  
7 Catz and Hurd. The Form 10-Q reported that total cloud revenues for the three months ended  
8 February 28, 2017 were \$1.189 billion, and for the nine months ended February 28, 2017 were  
9 \$3.211 billion.

10           219. These statements were materially false and misleading when made. It was  
11 misleading for Defendants to report total cloud revenues for the three months ended February 28,  
12 2017 were \$1.189 billion and for the nine months ended February 28, 2017 were \$3.211 billion,  
13 while failing to disclose that: (1) a material portion of the cloud revenue was produced through  
14 “financially engineered deals” created by Oracle’s use of the coercive “Audit, Bargain, Close” and  
15 “attached” deal tactics; (2) the revenue produced through these deals was artificial because it did  
16 not result from true purchases of Oracle’s cloud products, but rather resulted from clients  
17 purchasing a discount on audit penalties or on-premises products; and (3) consequently, a material  
18 portion of the reported cloud revenue and revenue growth did not consist of true cloud sales, and  
19 was not sustainable.

20           220. On May 4, 2017, Oracle held a press conference announcing the addition of new  
21 partners to its Oracle Network Cloud Service, during which Defendant Kurian told investors that  
22 Oracle “continue[s] to see tremendous growth across our cloud business.” Defendant Kurian was  
23 quoted in a related press release from the same day as stating that “[w]e continue to see tremendous  
24 growth across our cloud business.”

25           221. These statements were materially false and misleading when made. It was  
26 misleading for Defendant Kurian to state that Oracle “continue[s] to see tremendous growth across  
27 our cloud business” while failing to disclose that: (1) a material portion of the cloud revenue was  
28 produced through “financially engineered deals” created by Oracle’s use of the coercive “Audit,

1 Bargain, Close” and “attached” deal tactics; (2) the revenue produced through these deals was  
2 artificial because it did not result from true purchases of Oracle’s cloud products, but rather  
3 resulted from clients purchasing a discount on audit penalties or on-premises products; and  
4 (3) consequently, a material portion of the reported cloud revenue and revenue growth did not  
5 consist of true cloud sales, and was not sustainable.

6 222. Additionally, on May 9, 2017, Defendant Bond presented at the Jefferies  
7 Technology Group Investor Conference. Defendant Bond told investors that Oracle’s cloud growth  
8 was driven by customers “willingly making a choice” to abandon a multi-vendor IT strategy and  
9 consolidate their IT needs in Oracle, stating that “[a]s we move to cloud, the first thing that we see  
10 is we start to address more of the customer spend. The customers are willingly making a choice,  
11 where they’re forgoing their traditional multi-vendor strategy, spending money on software, then  
12 another vendor for hardware, another for labor and so on to going to a single vendor. And that  
13 product provider, in the case it’s Oracle, it does mean a fairly significant uplift in revenue for  
14 Oracle.” Defendant Bond also told investors that “[t]he good news” was that “growth in cloud is  
15 actually getting bigger.”

16 223. These statements were materially false and misleading when made. It was  
17 misleading for Defendant Bond to state that Oracle’s cloud growth was being driven by “customers  
18 [] willingly making a choice” to abandon a “multi vendor strategy” to consolidate with Oracle, and  
19 that these customer decisions were creating a “significant uplift in revenue for Oracle,” without  
20 disclosing that: (1) a material portion of Oracle’s cloud revenue was driven by “financially  
21 engineered deals” that were based on Oracle’s use of the coercive “Audit, Bargain, Close” and  
22 “attached” deal tactics; (2) the revenue produced through these deals was artificial because it did  
23 not result from true purchases of Oracle’s cloud products, but rather resulted from clients  
24 purchasing a discount on audit penalties or on-premises products; and (3) consequently, a material  
25 portion of the reported cloud revenue and revenue growth did not consist of true cloud sales, and  
26 was not sustainable.

27 224. Defendant Bond was also asked by an analyst to “give us some sort of indication  
28 as to what percentage of revenue and margin is associated with auditing practices of customers.”

1 In response, Defendant Bond denied that Oracle used audits to drive cloud sales, stating that: “This  
2 is one of those things where – gets talked about a lot. *And I think this is one of those things where*  
3 *the story is a lot bigger than the realities.*” Defendant Bond further assured investors that the  
4 Company was not using extortive or coercive techniques with regard to its audits, stating that “*And*  
5 *we try to do it as best we can, in as gracious [a] way as we can.*” Defendant Bond further assured  
6 investors that cloud revenues were not being driven by the audits and, in fact, the transition to  
7 cloud would decrease any incidence of audits, stating that “[o]n the other hand, the key, as we go  
8 to cloud, *is this conversation is going to go away*” and that “*as we go to cloud, we don’t have to*  
9 *worry about that anymore.* Because when you’re in the cloud, you basically have a number of  
10 users that you’ve signed up for.”

11 225. These statements were materially false and misleading when made. It was  
12 misleading for Defendant Bond to deny that Oracle used audits to drive cloud sales, and that  
13 Oracle’s audits were not coercive, without disclosing that a material portion of Oracle’s cloud  
14 revenue was, in fact, driven by “financially engineered deals” that were based on Oracle’s use of  
15 the coercive “Audit, Bargain, Close” tactic.

16 226. On May 10, 2017, Kurian presented at Oracle OpenWorld in India and again  
17 highlighted Oracle cloud’s growth, stating that “Because of the demand that we’re seeing in the  
18 cloud, we’ve had very, very strong growth in customers.” This statement was materially false and  
19 misleading when made. It was misleading for Defendant Kurian to state that Oracle had a “very,  
20 very strong growth in customers” due to legitimate demand for Oracle’s product while failing to  
21 disclose that: (1) a material portion of Oracle’s growth in cloud customers was through “financially  
22 engineered deals” that were based on Oracle’s use of the coercive “Audit, Bargain, Close” and  
23 “attached” deal tactics; and (2) the customers obtained through these deals were artificial because  
24 they were not truly purchasing Oracle’s cloud products, but were rather purchasing a discount on  
25 audit penalties or on-premises products.

1           **B. Defendants’ Materially False And Misleading Statements And Omissions**  
2           **During Oracle’s Fiscal Fourth Quarter 2017**

3           227. On June 21, 2017, Oracle issued a press release announcing its fiscal fourth quarter  
4 and full year 2017 results, and filed that press with the SEC on Form 8-K. The press release  
5 emphasized that Oracle’s year-over-year cloud fourth quarter cloud revenues had increased  
6 dramatically, stating that, “Total cloud revenues *were up 58%* [year-over-year] to \$1.4 billion, and  
7 non-GAAP total cloud revenues *were up 64%* [year-over-year] to \$1.4 billion.” The press release  
8 further highlighted that the Company’s year-over-year cloud full-year cloud revenues had also  
9 increased dramatically, stating that, “Total cloud revenues *were up 60%* [year-over-year] to \$4.6  
10 billion. Non-GAAP cloud revenues *were up 66%* [year-over-year] to \$4.7 billion.”

11           228. These statements were materially false and misleading when made. It was  
12 misleading for Oracle to report that totally quarterly cloud revenues were up 58% to \$1.4 billion,  
13 and total annual cloud revenues were up 60% to \$4.6 billion, without disclosing that: (1) a material  
14 portion of Oracle’s cloud revenue was driven by “financially engineered deals” that were based on  
15 Oracle’s use of the coercive “Audit, Bargain, Close” and “attached” deal tactics; (2) the revenue  
16 produced through these deals was artificial because it did not result from true purchases of Oracle’s  
17 cloud products, but rather resulted from clients purchasing a discount on audit penalties or on-  
18 premises products; and (3) consequently, a material portion of the reported cloud revenue and  
19 revenue growth did not consist of true cloud sales, and was not sustainable.

20           229. The June 21, 2017 press release also quoted Catz, who stressed the “rapid adoption”  
21 of Oracle’s cloud products and the “hyper-growth” of its business: “Our fourth quarter results  
22 were very strong as revenue growth and earnings per share both substantially exceeded the high  
23 end of guidance. . . . *We continue to experience rapid adoption of the Oracle Cloud led by the*  
24 *75% growth in our SaaS business in Q4. This cloud hyper-growth is expanding our operating*  
25 *margins*, and we expect earnings per share growth to accelerate in fiscal 2018.”

26           230. In that same press release, Hurd trumpeted the Company’s cloud revenues, and, in  
27 particular, that Oracle had delivered on its ambitious promise to deliver \$2 billion in annual  
28 recurring revenue for the 2017 fiscal year – with most of it supposedly booked during the Class

1 Period. This achievement marked another critical milestone in Oracle’s cloud transition that  
2 persuaded investors the Company’s pivot to cloud was complete. “We sold \$855 million of new  
3 annually recurring cloud revenue (ARR) in Q4, **putting us over our \$2 billion ARR bookings goal**  
4 **for fiscal year 2017 . . . . We also delivered over \$1 billion in quarterly SaaS revenue for the first**  
5 **time.** Next year is going to be even better. We expect to sell a lot more than \$2 billion in new cloud  
6 ARR in fiscal year 2018.”

7 231. These statements were materially false and misleading when made. It was  
8 misleading for Defendants to state that Oracle was experiencing “rapid adoption” of its cloud  
9 products, “hyper-growth” of its cloud business, and to emphasize the purportedly ballooning cloud  
10 sales figures set forth above, while failing to disclose that: (1) a material portion of Oracle’s cloud  
11 revenue was driven by “financially engineered deals” that were based on Oracle’s use of the  
12 coercive “Audit, Bargain, Close” and “attached” deal tactics; (2) the revenue produced through  
13 these deals was artificial because it did not result from true purchases of Oracle’s cloud products,  
14 but rather resulted from clients purchasing a discount on audit penalties or on-premises products;  
15 and (3) consequently, a material portion of the reported cloud revenue and revenue growth did not  
16 consist of true cloud sales, and was not sustainable.

17 232. Also on June 21, 2017, Oracle held its fiscal fourth quarter and full year 2017  
18 earnings call with investors. On that call, Catz told investors, “As you can see, we had a  
19 tremendous quarter in just about every way, as cloud revenue, new software license and earnings  
20 were all much better than expected. **The adoption by our customers of our products and services**  
21 **is at an all-time high . . . . The cloud has become our predominant growth vehicle.”** Catz further  
22 stated, “our tremendous growth resulted in SaaS revenue crossing the \$1 billion a quarter threshold  
23 in Q4, having grown 76% in constant currency . . . . Cloud PaaS and IaaS revenue for the quarter  
24 were \$403 million, up 45% from last year.” Catz further reported that “Total cloud revenues in the  
25 quarter were \$1.4 billion, up 66% from last year,” and that “cloud billings grew 42% in U.S. dollars  
26 this quarter.”

27 233. Similarly, Hurd highlighted Oracle’s growing cloud bookings, stating, “cloud  
28 bookings, \$855 million. **It’s the best quarter we have ever had. It’s up 43% over what was a very**

1 *strong Q4 last year.* We had a goal of \$2 billion in ARR, and we finished with nearly \$2.1  
2 billion. Next year, we will sell more . . . . As Safra said, cloud revenue growth at 66%, we're now  
3 at a \$6 billion annualized run rate . . . . *[w]ith revenue now at an annualized run rate of \$6 billion*  
4 *and a growth rate of 66%, we're clearly the fastest-growing cloud company at scale.*" Hurd stated  
5 that the success of Oracle's cloud business was exceeding expectations: "[w]e tracked ahead of  
6 virtually every metric that I track, whether it was cloud bookings, cloud revenue, EPS."

7 234. On that same June 21, 2017 earnings call, Ellison told investors that Oracle was  
8 outpacing its competitors in cloud growth and highlighted that growth as the driving force of  
9 Oracle's success: "Last fiscal year, *we sold more than \$2 billion in cloud annually recurring*  
10 *revenue.* . . . Our *rapid SaaS growth* is the driving force behind Oracle's revenue and earnings  
11 growth in Q4."

12 235. These statements were materially false and misleading when made. It was  
13 misleading for Defendants to state that Oracle was "clearly the fastest-growing cloud company at  
14 scale," that customer "adoption" of cloud products was "at an all-time high," and that "the cloud  
15 business has become our predominant growth vehicle," and to report the significant revenue  
16 growth and recurring revenue results described above while failing to disclose that: (1) a material  
17 portion of Oracle's cloud revenue was driven by "financially engineered deals" that were based on  
18 Oracle's use of the coercive "Audit, Bargain, Close" and "attached" deal tactics; (2) the revenue  
19 produced through these deals was artificial because it did not result from true purchases of Oracle's  
20 cloud products, but rather resulted from clients purchasing a discount on audit penalties or on-  
21 premises products; and (3) consequently, a material portion of the reported cloud revenue and  
22 revenue growth did not consist of true cloud sales, and was not sustainable.

23 236. On the call, an analyst asked Defendants about the quality of Oracle's reported  
24 cloud revenue, and specifically whether the Company's cloud growth was sustainable or whether  
25 it was a "1-year phenomenon," asking: "You just reiterated the fiscal '18 double-digit earnings  
26 growth. And I guess, I think what's becoming more relevant is, do we think about this as a 1-year  
27 phenom bouncing off of the fiscal transition? Or how can we really be thinking about earnings  
28 growth beyond fiscal '18 into '19 and '20?" Catz responded by falsely denying that Oracle's

1 reported cloud growth was driven by a short-term, “1-year” spike in revenue, but rather was built  
2 on a base of “recurring revenue”:

3 ***So this is absolutely not a 1-year phenomena.*** In fact, what you should see, as this  
4 goes on, is we will have less drag from the transition and the base will continue to  
5 grow. And so this should really accelerate. And understand that in our PaaS-IaaS  
6 business, we’re not even at scale. ***So as we really scale that up, profitability is  
going to increase more quickly and revenues will be built on the base of another  
recurring revenue – of the recurring revenue business.***

7 237. These statements were materially false and misleading when made. It was  
8 misleading for Defendants Catz to emphasize the quality and sustainability of Oracle’s cloud  
9 revenue, and state that the Company’s cloud growth was “absolutely not a 1-year phenomena,”  
10 without disclosing that: (1) a material portion of Oracle’s cloud revenue was driven by “financially  
11 engineered deals” that were based on Oracle’s use of the coercive “Audit, Bargain, Close” and  
12 “attached” deal tactics; (2) the revenue produced through these deals was artificial because it did  
13 not result from true purchases of Oracle’s cloud products, but rather resulted from clients  
14 purchasing a discount on audit penalties or on-premises products; and (3) consequently, a material  
15 portion of the reported cloud revenue and revenue growth did not consist of true cloud sales, and  
16 was not sustainable.

17 238. Analysts and investors reacted positively to Oracle’s announcement. *Tech Trader*  
18 *Daily* reported on June 22, 2017 that analysts were “ga-ga during the conference call following the  
19 report, responding to the results with phrases such as ‘really phenomenal,’ ‘impressive,’ ‘very  
20 strong,’ and ‘really fabulous.’” In a June 26, 2017 article, *Barron’s* stated that Oracle “last week  
21 wowed Wall Street with a financial report that put to rest fears of the company being rendered  
22 obsolete by cloud computing.” On June 22, 2017, BTIG analysts reported that “Oracle delivered  
23 excellent F4Q17 results with on-premise license to cloud transition now charging ahead at full  
24 steam” and “it’s now clear that we’re at a material inflection point and a trendline has formed.”  
25 On June 22, 2017 *Business Insider* article noted that “OracleCloud computing really is starting to  
26 breathe new life into Oracle. The company had a blow-out Q4 2017 earnings Wednesday thanks  
27 to 58% year-over-year growth for the quarter in cloud. A sunny outlook caused the stock to hit a  
28 52-week high of \$51.85 on Thursday[.]”



1           239. As a result of Oracle’s disclosures, Oracle’s stock price increased from \$45.07 on  
2 June 21, 2017 to \$48.93 on June 22, 2017. This included an increase of more than 10% in after-  
3 hours trading, which *Dow Jones Institutional News* called “the stock’s biggest one-day gain in  
4 two-and-a-half years, following a strong earnings report for its fiscal fourth quarter credited mostly  
5 to its growing cloud business. That left the shares at 17 times adjusted forward earnings – the  
6 highlight multiple Oracle has fetched since 2008.”

7           240. On June 27, 2017, Oracle filed its financial results for the fiscal year ended May  
8 31, 2017 with the SEC on Form 10-K, which was signed by Defendants Catz and Hurd. The Form  
9 10-K reported that total cloud revenues for the year ended May 31, 2017 was \$4.57 billion

10           241. This statement was materially false and misleading when made. It was misleading  
11 for Defendants to report total cloud revenues for the year ended May 31, 2017 as \$4.57 billion  
12 while failing to disclose that: (1) a material portion of the cloud revenue was produced through  
13 “financially engineered deals” created by Oracle’s use of the coercive “Audit, Bargain, Close” and  
14 “attached” deal tactics; (2) the revenue produced through these deals was artificial because it did  
15 not result from true purchases of Oracle’s cloud products, but rather resulted from clients  
16 purchasing a discount on audit penalties or on-premises products; and (3) consequently, a material  
17 portion of the reported cloud revenue and revenue growth did not consist of true cloud sales, and  
18 was not sustainable.

19           **C. Defendants’ Materially False And Misleading Statements And Omissions**  
20           **During Oracle’s Fiscal First Quarter 2018**

21           242. On September 14, 2017, Oracle issued a press release announcing its fiscal first  
22 quarter 2018 results, and filed that press with the SEC on Form 8-K. The press release reported  
23 substantial increases in Company’s year-over-year cloud growth, emphasizing that “Total Cloud  
24 Revenues were up 51% [year-over-year] to \$1.5 billion.” The Company also highlighted to  
25 investors that SaaS revenues were up 62% year-over-year to \$1.1 billion and PaaS and IaaS  
26 revenues were up 28% year-over-year to \$400 million. In addition, Catz highlighted to investors  
27 that Oracle was continuing to experience “sustained hyper-growth” in its cloud business: “*The*  
28

1 *sustained hyper-growth in our multi-billion dollar cloud business continues to drive Oracle's*  
2 *overall revenue and earnings higher and higher . . .”*

3 243. These statements were materially false and misleading when made. It was  
4 misleading for Defendants to report that “Total Cloud Revenues were up 51% to \$1.5 billion,” and  
5 state that Oracle’s cloud business was experiencing “sustained hyper-growth” that was driving  
6 Oracle’s revenue and earnings higher, while failing to disclose that: (1) a material portion of  
7 Oracle’s cloud revenue was driven by “financially engineered deals” that were based on Oracle’s  
8 use of the coercive “Audit, Bargain, Close” and “attached” deal tactics; (2) the revenue produced  
9 through these deals was artificial because it did not result from true purchases of Oracle’s cloud  
10 products, but rather resulted from clients purchasing a discount on audit penalties or on-premises  
11 products; and (3) consequently, a material portion of the reported cloud revenue and revenue  
12 growth did not consist of true cloud sales, and was not sustainable.

13 244. Also on September 14, 2017, Oracle held its fiscal first quarter 2018 earnings call  
14 with investors. On that call, Catz stressed the “very, very strong” customer adoption of Oracle’s  
15 cloud products and stated that this drove the Company’s outstanding revenue and earnings results:  
16 “[a]s you can see, we had another good quarter. *Customer adoption of our cloud products and*  
17 *services continue to be very, very strong*, and our on-premise business remains very resilient. The  
18 result was that total revenue were at the high end of my guidance, and earnings per share beat my  
19 guidance by \$0.01.”

20 245. Hurd also trumpeted Oracle’s cloud growth during Oracle’s September 14, 2017  
21 earnings call with investors. Hurd stated, “Cloud revenue up 51% now at a \$6 billion annual run  
22 rate.” Defendant Hurd stated that SaaS revenue was “up 61%, as Safra said, accelerating from 55%  
23 growth last year” and that with regard to PaaS, Oracle’s “revenue was up 28%.” Defendant Hurd  
24 then highlighted Oracle’s cloud bookings by stating, “[o]ur cloud bookings were executing well  
25 on a very big and growing pipeline. . . Revenue growth now at an annualized rate of \$6 billion or  
26 growth rate of 51%, and we are the fastest growing cloud company at scale.”

27 246. These statements were materially false and misleading when made. It was  
28 misleading for Catz to state that “[c]ustomer adoption of our cloud products and services continue

1 to be very, very strong” and for Hurd to state that Oracle was “the fastest growing cloud company  
2 at scale,” and to report the revenue figures and growth rates set forth above, while failing to  
3 disclose that: (1) a material portion of Oracle’s cloud revenue was driven by “financially  
4 engineered deals” that were based on Oracle’s use of the coercive “Audit, Bargain, Close” and  
5 “attached” deal tactics; (2) the revenue produced through these deals was artificial because it did  
6 not result from true purchases of Oracle’s cloud products, but rather resulted from clients  
7 purchasing a discount on audit penalties or on-premises products; and (3) consequently, a material  
8 portion of the reported cloud revenue and revenue growth did not consist of true cloud sales, and  
9 was not sustainable.

10 247. On that same call, a Macquarie analyst noted Oracle’s “momentum in [the] cloud.”  
11 Defendant Hurd responded, attributing Oracle’s success to its superior products, implementation,  
12 and salesforce: “just sort of every aspect of selling in the cloud, I think the company holistically is  
13 getting better at. We’re better -- our *products* are better. Our *sales force* is better. Our *ability to*  
14 *implement* is better. Our ability to do all of these things has just continued to improve quarter by  
15 quarter by quarter, and it manifests itself in the type of results we’re talking about this afternoon.”

16 248. These statements were materially false and misleading when made. It was  
17 misleading for Hurd to Defendants to state that Oracle’s cloud growth was driven by its superior  
18 products, implementation, and salesforce while failing to disclose that: (1) a material portion of  
19 Oracle’s cloud revenue was driven by “financially engineered deals” that were based on Oracle’s  
20 use of the coercive “Audit, Bargain, Close” and “attached” deal tactics; (2) the revenue produced  
21 through these deals was artificial because it did not result from true purchases of Oracle’s cloud  
22 products, but rather resulted from clients purchasing a discount on audit penalties or on-premises  
23 products; and (3) consequently, a material portion of the reported cloud revenue and revenue  
24 growth did not consist of true cloud sales, and was not sustainable.

25 249. Following Defendants’ statements, on September 14, 2017, MUFG analysts  
26 reported that “the company had a solid quarter as it continues its transition to the cloud. We note  
27 the company’s sustained a 50+% year-over-year (YoY) cloud revenue growth rates have persisted  
28 even as cloud revenues passed \$1B in FY 2Q17.” A September 15, 2017 Cowen report noted that

1 “ORCL beat across the board, with total Cloud growth of 51%[.]” A September 15, 2017 Credit  
2 Suisse report stated that “[w]e maintain our Outperform rating and \$62 target price following better  
3 than expected F1Q results, with organic cc revenue growth accelerating to ~3.5% y/y, its best rate  
4 in 2 years.”

5 250. On September 18, Oracle filed its fiscal first quarter 2018 financial results with the  
6 SEC on Form 10-Q, which was signed by Defendants Catz and Hurd. In that Form 10-Q, Oracle  
7 reported that total cloud revenues were \$1.467 billion for the three months ended August 31, 2017.

8 251. These statements were materially false and misleading when made. It was  
9 misleading for Defendants to report that total cloud revenues were \$1.467 billion for the three  
10 months ended August 31, 2017 while failing to disclose that: (1) a material portion of Oracle’s  
11 cloud revenue was driven by “financially engineered deals” that were based on Oracle’s use of the  
12 coercive “Audit, Bargain, Close” and “attached” deal tactics; (2) the revenue produced through  
13 these deals was artificial because it did not result from true purchases of Oracle’s cloud products,  
14 but rather resulted from clients purchasing a discount on audit penalties or on-premises products;  
15 and (3) consequently, a material portion of the reported cloud revenue and revenue growth did not  
16 consist of true cloud sales, and was not sustainable.

17 252. On October 5, 2017, Defendants Bond, Hurd, Catz, Miranda, and Kurian, among  
18 other Oracle senior executives participated in Oracle’s OpenWorld Financial Analyst Meeting.  
19 During that meeting, Defendant Miranda highlighted the reasons that Oracle’s customers were  
20 choosing cloud. First, Miranda highlighted Oracle SaaS’s speed, stating “[w]hat do we hear from  
21 our customers as far as the reasons why they choose us over competition? First and foremost,  
22 across the board, *most customers today are moving to SaaS for speed*. It’s all about speed of  
23 innovation, speed of reaction, speed of either disrupting others in their industry or speed to be  
24 avoided in that disruption.” Second, Defendant Miranda highlighted that Oracle had the  
25 “broadest” and “best” set of solutions, stating “[n]ext and probably what gets overlooked is though  
26 *we have the broadest, it doesn’t mean we don’t have the best of breed in every solution going*  
27 *forward*.” Third, Miranda stressed Oracle’s “global reach” of its products supporting globalization  
28 and broader infrastructure, stating “our global reach, not only the global reach in terms of the

1 breadth of Oracle’s products and supporting globalizations and local rules and regulations, but the  
2 global reach of our broader infrastructures: Oracle’s consulting, Oracle’s partners, the training that  
3 we can afford, the language we can do, support that can take global customers – really aligned for  
4 global customers today but also customers who are expanding globally.” Fourth, Miranda  
5 highlighted that the benefits for customers included “us doing the labor and hosting things” and  
6 that “we think it’s more secure because we keep you always up to date. And we enhance the  
7 technology . . . [s]o there’s substantial benefits.” Miranda concluded by stating that “just  
8 functionally, the speed of innovation is unmatched . . . . Today, in our SaaS ERP and SaaS HR and  
9 SaaS CRM, we update 100% of our customers twice a year. And the importance of that is really  
10 borne out over the last couple of years.”

11 253. These statements were materially false and misleading when made. It was  
12 misleading for Defendant Miranda to state that Oracle’s speed, “broadest” and “best” set of  
13 solutions, “global reach,” product updates, and “speed of innovation” were causing Oracle’s  
14 customers to adopt the Company’s cloud products, while failing to disclose that: (1) a material  
15 driver of Oracle’s cloud sales to on-premises customers was Oracle’s use of the coercive “Audit,  
16 Bargain, Close” and “attached” deal tactics to create “financially engineered deals;” and (2) in  
17 these deals, the on-premises customers were not truly purchasing Oracle’s cloud products, but  
18 rather were purchasing a discount on audit penalties or on-premises products.

19 254. At a November 7, 2017 Sanford C. Bernstein Technology Innovation Summit,  
20 Defendant Bond made additional false and misleading statements regarding the drivers of Oracle’s  
21 cloud revenue growth. Specifically, Bond was asked about the “revenue impact of a client moving  
22 from an on-prem revenue license to cloud” and the “driver, the real biggest driver you think of  
23 why they would be moving on-premise to SaaS.” Defendant Bond responded that Oracle’s  
24 customers were moving from on-premises to cloud for two reasons. First, because “*by moving*  
25 *on-premise loads to cloud, you’re going to see a reduction of total cost of ownership,*” *i.e.*, the  
26 cloud product was less expensive. “That’s the first primary advantage.” Second, “*You’ll also see*  
27 *customers who want to move toward cloud for what I’ll call an innovation advantage,*” *i.e.*, the  
28 cloud product made technology updates easier to install. Bond summed up: “*So from a cost*

1 *standpoint as well as an innovation standpoint, there's a lot to like about cloud for the customer.*  
2 *And I think this is one of the biggest drivers of why you're seeing customers really excited about*  
3 *this even if it's still early."*

4 255. These statements were materially false and misleading when made. It was  
5 misleading for Defendant Bond to state that the drivers of Oracle's customers moving from on-  
6 premises to the cloud was a "reduction of total cost of ownership" and "an innovation advantage,"  
7 while failing to disclose that: (1) a material driver of Oracle's cloud sales to on-premises customers  
8 was Oracle's use of the coercive "Audit, Bargain, Close" and "attached" deal tactics to create  
9 "financially engineered deals;" and (2) in these deals, the on-premises customers were not truly  
10 purchasing Oracle's cloud products, but rather were purchasing a discount on audit penalties or  
11 on-premises products.

12 **D. Defendants' Materially False And Misleading Statements And Omissions**  
13 **During Oracle's Fiscal Second Quarter 2018**

14 256. On November 15, 2017, Oracle held its Annual Meeting of Stockholders.  
15 Defendants continued to discuss Oracle's explosive cloud growth at that meeting. Ellison stated,  
16 "Where we deliver *the applications in the public cloud is growing very, very, very rapidly* and  
17 really subsuming, taking over our application business . . . . *Our SaaS applications business has*  
18 *been growing in excess of 50%, been growing very, very, very rapidly."*

19 257. These statements were materially false and misleading when made. It was  
20 misleading for Defendant Ellison to state that Oracle's SaaS business "has been growing in excess  
21 of 50%" and "very, very rapidly," while failing to disclose that: (1) a material portion of Oracle's  
22 cloud revenue was driven by "financially engineered deals" that were based on Oracle's use of the  
23 coercive "Audit, Bargain, Close" and "attached" deal tactics; (2) the revenue produced through  
24 these deals was artificial because it did not result from true purchases of Oracle's cloud products,  
25 but rather resulted from clients purchasing a discount on audit penalties or on-premises products;  
26 and (3) consequently, a material portion of the reported cloud revenue and revenue growth did not  
27 consist of true cloud sales, and was not sustainable.  
28

1           258. As discussed above, on December 14, 2017, the corrective disclosure period began.  
2 On that day, Oracle held its fiscal second quarter 2018 earnings call with investors. Oracle reported  
3 slowing cloud growth in the second quarter of 2018 that missed market expectations, and provided  
4 guidance for the further slowing of cloud growth that also fell below market expectations. These  
5 occurrences were a function of the fact that the Company was finding it increasingly difficult to  
6 use the ABC tactic or attached deals to push its cloud products on customers who did not want  
7 them, and customers were not renewing the ABC or attached deals they had previously been  
8 pushed into. This partially revealed to the market that the Company's cloud revenue was  
9 unsustainable. As a result of Defendants' announcements, Oracle's stock priced dropped  
10 approximately 4%, from \$50.19 per share on December 14, 2017, to close at \$48.30 per share on  
11 December 15, 2017.

12           259. Nevertheless, Defendants made a number of soothing statements that continued to  
13 conceal the full truth from investors and partially mollified their concern about Oracle's cloud  
14 business.

15           260. On the December 14, 2017 earnings call, Catz told investors that total cloud  
16 revenues in the quarter were \$1.5 billion, up 39% from the previous year, and stated that "[c]loud  
17 SaaS revenue for the quarter were \$1.1 billion, up 47% from last year. Fusion cloud revenue was  
18 56% for the quarter. Cloud PaaS and IaaS revenue for the quarter was \$398 million, up 20% from  
19 last year." Catz also told investors that "[a]s for cloud margins, our SaaS business continues to  
20 scale and grow, and the gross margin has expanded to 66%, up from 59% last Q2."

21           261. Catz further told investors that "[c]ustomer adoption of our cloud products and  
22 services continues to be very strong, and what we have called our on-premise business remains  
23 robust. Bottom line, our transition to the to the cloud is going well."

24           262. These statements were materially false and misleading when made. It was  
25 misleading for Defendant Catz to report that "customer adoption of our cloud products" "continues  
26 to be very strong" and that the "transition to the cloud is going well," and to report the revenue  
27 metrics set forth above, while failing to disclose that: (1) a material portion of Oracle's cloud  
28 revenue was driven by "financially engineered deals" that were based on Oracle's use of the



1 coercive “Audit, Bargain, Close” and “attached” deal tactics; (2) the revenue produced through  
2 these deals was artificial because it did not result from true purchases of Oracle’s cloud products,  
3 but rather resulted from clients purchasing a discount on audit penalties or on-premises products;  
4 and (3) consequently, a material portion of the reported cloud revenue and revenue growth did not  
5 consist of true cloud sales, and was not sustainable.

6         263. On Oracle’s December 14, 2017 earnings call, a MoffettNathanson analyst asked  
7 Defendants to explain why cloud revenue growth was slowing and, specifically, whether customers  
8 were not deploying Oracle cloud products: “I think what some of us are trying to reconcile is, is  
9 the cloud guidance is a little bit slower than it has been. So it looks like something might be  
10 decelerating a little bit. And I just wanted to understand, is there a gap as people maybe buy licenses  
11 on-prem, and then maybe it’s a quarter or 2 before they deploy in the cloud?” Catz responded by  
12 falsely denying that customers were not declining to deploy cloud products, but were, rather,  
13 strategically timing that deployment and “moving to [Oracle’s] cloud when it makes sense for  
14 them.”

15         264. Addressing the same analyst question about the cause of Oracle’s revenue  
16 slowdown, Ellison also falsely stated that the slowdown was merely due to the fact that “a lot of  
17 customers are waiting for” Oracle’s next generation cloud product, “the Autonomous Database,”  
18 a cloud database that uses machine learning to reduce the need for periodic maintenance, “just to  
19 become available.”

20         265. These statements were materially false and misleading when made. It was  
21 misleading for Defendants to state that any slowdown in revenue or delay in deployment was due  
22 to “customers “waiting for the Autonomous Database just to become available,” or to customer’s  
23 strategic deployment decisions, when in truth, the deceleration of cloud revenue was caused by the  
24 fact that Oracle was finding it increasingly difficult to use the ABC tactic or attached deals to push  
25 its cloud products on customers who did not want them, and customers were not renewing the  
26 ABC or attached deals they had previously been pushed into.

27         266. In response to analyst questions about “competitors and surveys saying customers  
28 are moving off Oracle,” Ellison denied that customers were “moving off Oracle,” instead

1 challenging the analyst to “go ahead. You tell me who’s moving off of Oracle.” Hurd also  
2 responded to the same question by stating that “I’d like to just go back to the math and just go back  
3 to the numbers, right? I mean, we’ve got sort of every other database being used, just in share  
4 terms, is ours. And when you see us throwing up yet again another growth rate above market, it’s  
5 just any of these sort of stories, anecdotes -- by the way, I’ve heard them for 7 years, right, that --  
6 yes and predates me. So everyone’s, ‘Oh, everyone’s moving off the Oracle Database. . . I’d just  
7 love somebody show up with something more than a story. Just show up with a number . . .  
8 certainly, nobody gaining share over us . . . when you just look at overall numbers, we’re gaining  
9 share in Database.’”

10 267. These statements were materially false and misleading when made. It was  
11 misleading for Defendants to state that Oracle customers were not “moving off [] Oracle” and to  
12 emphasize Oracle’s “growth rate above market,” while failing to disclose that a material portion  
13 of Oracle’s cloud customers were declining to renew the “financially engineered deals” that were  
14 based on Oracle’s use of the coercive “Audit, Bargain, Close” and “attached” deal tactics.

15 **E. Defendants’ Materially False And Misleading Statements And Omissions**  
16 **During Oracle’s Fiscal Third Quarter 2018**

17 268. On March 19, 2018, Oracle held its fiscal third quarter 2018 earnings call with  
18 investors. As discussed above, Oracle reported even more significant slowdowns in its cloud  
19 revenue and margin growth than it had in December 2017, again missing market expectations, and  
20 provided guidance for further slowing cloud growth below market expectations. These occurrences  
21 were a function of the fact that the Company was finding it increasingly difficult to use the ABC  
22 tactic or attached deals to push its cloud products on customers who did not want them, and  
23 customers were not renewing the ABC or attached deals they had previously been pushed into.  
24 This partially revealed to the market that the Company’s cloud revenue was unsustainable. As a  
25 result of Defendants’ announcements, Oracle’s stock price declined nearly 10%, from \$51.95 per  
26 share on March 19, 2018 to \$47.05 per share on March 20, 2018.

27 269. Nevertheless, as before, Defendants made a number of soothing statements that  
28 continued to conceal the full truth from investors and partially mollified their concern about

1 Oracle's cloud business. For instance, Defendants assured investors that Oracle's cloud renewal  
2 rates remained highly positive and would drive additional revenue expansion. Ellison stated, "the  
3 combination of faster sales and higher renewal rates should dramatically increase our growth rate  
4 in our SaaS business."

5 270. Ellison also attributed the decline in Oracle's cloud revenue growth to Oracle's  
6 "bring your own license" or BYOL program. "BYOL" allowed clients to purchase software  
7 licenses that could be flexibly used in whatever medium the customer chose, either cloud or on-  
8 premises. Thus, if customers had existing Oracle software licenses for other Oracle legacy services,  
9 customers could reuse them when subscribing to Oracle PaaS.

10 271. Ellison stated, "Let me try to be clear about this, as I can be. With BYOL, when  
11 someone brings their database to the cloud, some of that database -- some of that revenue goes into  
12 license and someone -- some of that revenue goes into cloud. Without BYOL, if we didn't have  
13 BYOL and someone -- an Oracle customer went to the cloud, 100% of the revenue would go to  
14 the cloud. So there's no question, BYOL has lowered our cloud revenue and increased our license  
15 revenue."

16 272. These statements were materially false and misleading when made. It was  
17 misleading for Ellison to attribute the decline in Oracle cloud revenue growth to its BYOL  
18 program, when, in truth, the deceleration was caused by the fact that Oracle was finding it  
19 increasingly difficult to use the ABC tactic or attached deals to push its cloud products on  
20 customers who did not want them, and customers were not renewing the ABC or attached deals  
21 they had previously been pushed into.

22 273. Additionally, on May 22, 2018, in response to a report by *The Information* that  
23 Oracle customers were resisting the Company's efforts to use audits to drive cloud deals, the  
24 Company put out a response that:

25 Oracle, like virtually every other software company, conducts software audits in  
26 limited circumstances to ensure that our products are used as licensed. We pride  
27 ourselves in providing our existing 400,000 customers a variety of options to move  
28 to the cloud when they are ready. Oracle is grateful to its large and growing  
customer base and has no reason to resort to scare tactics to solicit business. We are  
disappointed that ***The Information is presenting inaccurate accounts regarding a***

1 *handful of customers, based on anonymous sources or competitors who seek to*  
2 *enhance their own consulting services.*

3 274. These statements were materially false and misleading when made. It was  
4 misleading for Oracle to deny that Oracle used audits to drive cloud sales, and state that Oracle  
5 had “no reason to resort to scare tactics to solicit business,” without disclosing that a material  
6 portion of Oracle’s cloud revenue was, in fact, driven by “financially engineered deals” that were  
7 based on Oracle’s use of the coercive “Audit, Bargain, Close” tactic.

### 8 **VIII. LOSS CAUSATION**

9 275. The artificial inflation created by Defendants’ alleged misrepresentations and  
10 omissions regarding Oracle’s cloud sales and revenue were removed from Oracle’s share price in  
11 direct response to information revealed in a series of disclosures. As set forth below, these  
12 disclosures divulged information that gradually corrected Defendants’ prior misrepresentations  
13 and omissions of material fact and/or disclosed facts Defendants misrepresented and omitted that  
14 were a substantial factor in causing investors’ economic loss.

15 276. On December 14, 2017, after the market closed, Defendants issued Oracle’s second  
16 quarter 2018 financial results and disclosed that Oracle revenue growth had decelerated, growing  
17 by less than 40%. The Company also reported significantly lower cloud growth estimates, stating  
18 it expected only mid-20% growth the following quarter – a marked decline.

19 277. Following these revelations, the price of Oracle stock declined by approximately  
20 4%, from \$50.19 per share on December 14, 2017, to close at \$48.30 per share on December 15,  
21 on high trading volume of 75,176,000 shares versus the class period average of 14,856,931 shares.

22 278. The market connected these disclosures to Oracle’s sales practices. For example, a  
23 *Business Insider* article dated December 15, 2017 noted that “there are some signs that some of  
24 Oracle’s customers are fed up with some of its hard-nosed sales tactics.” Additionally, JMP  
25 analysts noted in a December 15, 2017 report that “many customers are irate with Oracle due to  
26 auditing practices on the technology side of the business and have already placed their bets on  
27 AWS, Microsoft Azure, or Google Cloud Platform.”

28 279. Defendants, however, prevented the stock from falling further by falsely stating that  
“customer adoption of our cloud products” “continues to be very strong” and that the “transition

1 to the cloud is going well.” Defendants further told investors that the cloud margins had  
2 underperformed because, “a lot of customers are waiting for the Autonomous Database just to  
3 become available.” Defendants’ damage control worked. For example, a December 15, 2017  
4 Jefferies report entitled “Patience Grasshopper” stated that “[w]e understand investor frustration  
5 with the unwinding complexity of this model as it evolves, but we continue to believe that the  
6 business momentum in the field continues to build and this will translate into meaningful cash  
7 flow growth over time.”

8 280. On March 19, 2018, after the market closed, Oracle issued its third quarter 2018  
9 financial results, again disclosing that the Company’s cloud growth had slowed even more  
10 significantly to only 32%. Oracle admitted that it expected further deceleration of the Company’s  
11 cloud business, with Catz telling investors on the Company’s earnings call that cloud revenues are  
12 “expected to grow 19% to 23% in USD, 17% to 21% in constant currency,” well below the  
13 market’s expectations.

14 281. In response to the Company’s March 19, 2018 disclosures, Oracle stock declined  
15 nearly 10%, falling from \$51.95 per share on March 19 to \$47.05 per share on March 20, on high  
16 volume of 68,601,000 shares.

17 282. The market connected these disclosures to Oracle’s undisclosed financially  
18 engineered deals and extortive tactics. For example, a JMP analyst report dated March 20, 2018  
19 highlighted Oracle’s “cloud weakness,” including that there were “fundamental challenge[s]” in  
20 the Company’s cloud business, such as “Oracle’s auditing mentality compared to the ‘partner  
21 friendly’ nature of cloud platforms such as Amazon.” And, in the months following this partial  
22 corrective disclosure, investors’ questions about Oracle’s coercive sales practices intensified. For  
23 example, in a May 21, 2018 article entitled “Oracle’s Strong Arm Cloud Tactics – the 2018  
24 Model,” *Forbes* reported that Oracle was using its “‘Audit Bargain Close’ playbook” “to pressure  
25 customers into cloud adoption” and in a May 22, 2018 article, *The Information* reported that large  
26 Oracle customers were resisting the Company’s efforts to use audits to drive cloud deals.

27 283. Defendants, however, prevented the stock from falling further by issuing a number  
28 of soothing statements to investors. For example, Defendants attributed the falling cloud revenue

1 growth to Oracle's BYOL program, with Ellison stating that "there's no question, BYOL has  
2 lowered our cloud revenue and increased our license revenue." Again, Defendants' assurances  
3 worked. For example, on March 19, 2018, MUFG analysts issued a report entitled "BYO License  
4 Artificially Dampens Cloud Growth: Thesis Still Intact."

5       284. On June 14, 2018, JPMorgan issued a report announcing it was downgrading Oracle  
6 shares to Neutral based on the results of "large-scale CIO survey," in which the analysts ask "CIOs  
7 to rank the top 8 or 9 IT mega-vendors in terms of who will be most critical and indispensable to  
8 their IT environment in the future." JPMorgan reported that while in the past Oracle "has been  
9 stable and received ~11% of the votes," the Company's standing in this latest poll dropped by more  
10 than 40% to 6.5%. JPMorgan connected this drop in CIO ranking to Oracle's coercive practices,  
11 stating that reasons that CIOs moved away from Oracle included that they "do not like Oracle's  
12 business practices and difficulty of working with them in the past." Investors were focused on this  
13 article. For example, Data Centre stated in a June 15, 2018 article that the JP Morgan report "may  
14 come as no surprise to customers who have long been frustrated with Oracle's strong-arm tactics  
15 to get them to shift to the fluffy stuff, as the legacy database vendor becomes increasingly desperate  
16 to catch up to other cloud vendors."

17       285. On this news, the price of Oracle stock fell approximately 5%, from \$48.27 per  
18 share on June 13, 2018 to \$45.90 per share on June 14, 2018, on high trading volume of 37,001,300  
19 shares.

20       286. On June 19, 2018, Oracle held its fourth quarter 2018 earnings call with investors  
21 after the market closed. On that call, Oracle shocked the market by announcing that it would no  
22 longer separately report financial results for its cloud business, and would, instead, consolidate  
23 those financial results into a combined "Cloud Services and License Support" line item so that  
24 investors could no longer see them. In addition, Catz disclosed that total cloud revenue growth for  
25 the quarter had come in at just 21%.

26       287. On this news, the price of Oracle stock fell approximately 7.5%, from \$46.27 per  
27 share on June 19, 2018 to \$42.82 per share on June 20, 2018, on high trading volume of 59,129,000  
28 shares.

1           288. The market immediately connected the June 19, 2018 disclosure and the decrease  
2 in transparency with “red flags” at Oracle. For example, JMP reported that the dramatic  
3 deceleration in Oracle’s cloud growth was driven by the Company’s treatment of its customers  
4 and that an industry contact told them that “*No one is re-upping. There was a big incentive to sell*  
5 *cloud – it was attached to contracting docs. Buy off but then it’s up to you to use it. There was*  
6 *no customer success to say, ‘Hey, you bought this, now let’s get value from it.’” Similarly, The*  
7 *Upper Edge* reported on June 27, 2018 that “[m]any analysts are speculating that the timing of this  
8 change [in financial reporting], and the fact that Oracle is being evaluated based on its cloud  
9 growth, suggests that it may have something to hide” and noted that Oracle’s “Cloud Deals [were]  
10 Manufactured by Duress.”

11           289. All told, the stock declined 19% percent from its Class Period high of \$52.97 to  
12 \$42.82 on June 20, 2018.

13           290. Defendants’ wrongful conduct, as alleged herein, directly and proximately caused  
14 the damages suffered by Lead Plaintiff and other Class members. Had Defendants disclosed  
15 complete, accurate, and truthful information concerning these matters during the Class Period,  
16 Lead Plaintiff and other Class members would not have purchased or otherwise acquired Oracle’s  
17 securities or would not have purchased or otherwise acquired these securities at the artificially  
18 inflated prices that they paid. It was also foreseeable to Defendants that misrepresenting and  
19 concealing these material facts from the public would artificially inflate the price of Oracle  
20 securities and that the ultimate disclosure of this information, or the materialization of the risks  
21 concealed by Defendants’ material misstatements and omissions would cause the price of Oracle  
22 securities to decline.

## 23 **IX. THE INAPPLICABILITY OF THE STATUTORY SAFE HARBOR**

24           291. Oracle’s “Safe Harbor” warnings accompanying its forward-looking statements  
25 issued during the Class Period were ineffective to shield those statements from liability.

26           292. Defendants are also liable for any false or misleading forward-looking statements  
27 pleaded herein because, at the time each such statement was made, the speaker knew the statement  
28 was false or misleading and the statement was authorized and/or approved by an executive officer



1 of Oracle who knew that the statement was false. None of the historic or present tense statements  
2 made by Defendants were assumptions underlying or relating to any plan, projection, or statement  
3 of future economic performance, as they were not stated to be such assumptions underlying or  
4 relating to any projection or statement of future economic performance when made, nor were any  
5 of the projections or forecasts made by Defendants expressly related to, or stated to be dependent  
6 on, those historic or present tense statements when made.

7 **X. THE PRESUMPTION OF RELIANCE**

8 293. At all relevant times, the market for Oracle stock was an efficient market for the  
9 following reasons, among others:

10 (a) Oracle stock met the requirements for listing, and was listed and actively  
11 traded on NYSE, a highly efficient and automated market;

12 (b) As a regulated issuer, Oracle filed periodic public reports with the SEC and  
13 NYSE;

14 (c) Oracle regularly and publicly communicated with investors via established  
15 market communication mechanisms, including through regular disseminations of press releases on  
16 the national circuits of major newswire services and through other wide-ranging public disclosures,  
17 such as communications with the financial press and other similar reporting services; and

18 (d) Oracle was followed by several securities analysts employed by major  
19 brokerage firm(s) who wrote reports which were distributed to the sales force and certain  
20 customers of their respective brokerage firm(s). Each of these reports was publicly available and  
21 entered the public marketplace.

22 294. As a result of the foregoing, the market for Oracle stock promptly digested current  
23 information regarding Oracle from all publicly available sources and reflected such information in  
24 the price of Oracle stock. Under these circumstances, all purchasers of Oracle stock during the  
25 Class Period suffered similar injury through their purchase of Oracle stock at artificially inflated  
26 prices and the presumption of reliance applies.

27 295. A Class-wide presumption of reliance is also appropriate in this action under the  
28 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),

1 because the Class' claims are grounded on Defendants' material omissions. Because this action  
2 involves Defendants' failure to disclose material adverse information regarding revenue growth in  
3 Oracle's cloud segment—information that Defendants were obligated to disclose—positive proof  
4 of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be  
5 material in the sense that a reasonable investor might have considered them important in making  
6 investment decisions. Given the importance of Oracle's cloud business, as set forth above, that  
7 requirement is satisfied here.

#### 8 **XI. CLASS ALLEGATIONS**

9 296. Lead Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal  
10 Rules of Civil Procedure on behalf of all persons who purchased Oracle stock during the Class  
11 Period (the "Class"). Excluded from the Class are Defendants and their families, directors, and  
12 officers of Oracle and their families and affiliates.

13 297. The members of the Class are so numerous that joinder of all members is  
14 impracticable. The disposition of their claims in a class action will provide substantial benefits to  
15 the parties and the Court. Oracle has approximately 3.59 billion shares of stock outstanding, owned  
16 by at least hundreds or thousands of investors.

17 298. Questions of law and fact common to the members of the Class which predominate  
18 over questions which may affect individual Class members include:

- 19 (a) Whether Defendants violated the Exchange Act;
- 20 (b) Whether Defendants omitted and/or misrepresented material facts;
- 21 (c) Whether Defendants' statements omitted material facts necessary in order  
22 to make the statements made, in light of the circumstances under which they were made, not  
23 misleading;
- 24 (d) Whether Defendants knew or recklessly disregarded that their statements  
25 and/or omissions were false and misleading;
- 26 (e) Whether Defendants' misconduct impacted the price of Oracle stock;
- 27 (f) Whether Defendants' conduct caused the members of the Class to sustain  
28 harm; and

1 (g) The extent of harm sustained by Class members and the appropriate  
2 measure of harm.

3 299. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class  
4 sustained harm from Defendants' wrongful conduct.

5 300. Plaintiff will adequately protect the interests of the Class and has retained counsel  
6 experienced in class action securities litigation. Plaintiff has no interests which conflict with those  
7 of the Class.

8 301. A class action is superior to other available methods for the fair and efficient  
9 adjudication of this controversy.

10 **XII. CLAIMS BROUGHT PURSUANT TO THE EXCHANGE ACT**

11 **COUNT I**

12 **For Violations Of Section 10(b) Of The Exchange Act And**  
13 **SEC Rule 10b-5 Promulgated Thereunder**  
14 **(Against All Defendants)**

15 302. Lead Plaintiff repeats and realleges each and every allegation contained above as if  
16 fully set forth herein.

17 303. This Count is asserted on behalf of all members of the Class against Defendants for  
18 violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated  
19 thereunder, 17 C.F.R. § 240.10b-5.

20 304. During the Class Period, Defendants disseminated or approved the false statements  
21 specified above, which they knew were, or they deliberately disregarded as, misleading in that they  
22 contained misrepresentations and failed to disclose material facts necessary in order to make the  
23 statements made, in light of the circumstances under which they were made, not misleading.

24 305. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they:  
25 (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material  
26 facts or omitted to state material facts necessary in order to make the statements made, in light of  
27 the circumstances under which they were made, not misleading; and/or (c) engaged in acts,  
28 practices, and a course of business that operated as a fraud or deceit upon Lead Plaintiff and others

1 similarly situated in connection with their purchases of Oracle common stock during the Class  
2 Period.

3 306. Defendants, individually and in concert, directly and indirectly, by the use of means  
4 or instrumentalities of interstate commerce and/or of the U.S. mails, engaged and participated in a  
5 continuous course of conduct that operated as a fraud and deceit upon Lead Plaintiff and the Class;  
6 made various untrue and/or misleading statements of material facts and omitted to state material  
7 facts necessary in order to make the statements made, in light of the circumstances under which  
8 they were made, not misleading; made the above statements intentionally or with a deliberately  
9 reckless disregard for the truth; and employed devices and artifices to defraud in connection with  
10 the purchase and sale of Oracle common stock, which were intended to, and did deceive the  
11 investing public, including Lead Plaintiff and the Class, regarding, among other things, the reasons  
12 for Oracle's cloud revenues and growth.

13 307. Defendant Oracle is liable for all materially false and misleading statements made  
14 during the Class Period, as alleged above. The Executive Defendants, as top executive officers of  
15 the Company during their respective tenures, are liable as direct participants in the wrongs  
16 complained of herein. The Executive Defendants are liable for the false and misleading statements  
17 they personally made and/or signed, as alleged above.

18 308. As described above, Defendants acted with scienter throughout the Class Period, in  
19 that they acted either with intent to deceive, manipulate, or defraud, or with deliberate recklessness.  
20 The misrepresentations and omissions of material facts set forth herein, which presented a danger  
21 of misleading buyers or sellers of Oracle stock, were either known to the Defendants or were so  
22 obvious that the Defendants should have been aware of them.

23 309. Lead Plaintiff and the Class have suffered damages in that, in reliance on the  
24 integrity of the market, they paid artificially inflated prices for Oracle common stock, which  
25 inflation was removed from its price when the true facts became known. Lead Plaintiff and the  
26 Class would not have purchased Oracle common stock at the prices they paid, or at all, if they had  
27 been aware that the market price had been artificially and falsely inflated by these Defendants'  
28 misleading statements.



1 purporting accuracy. In September 2014, Ellison described Catz as “[v]ery details-oriented,” “the  
2 No. 2 person for some time,” and “our first- ever, de facto chief operating officer.”

3 316. Defendant Hurd is, and was at all relevant times, co-Chief Executive Officer of  
4 Oracle, as well as a member of the Company’s Board of Directors. As stated on Oracle’s website,  
5 Hurd “manage[d] corporate direction and strategy at Oracle, facilitating company activity in  
6 consulting, sales, marketing, alliances and channels, and support.” Hurd’s personal page states  
7 that he “helped shift the long-term strategy of the company toward the cloud” and “[a]dapting to  
8 this new business model.” During the Class Period, Hurd signed and certified each of the  
9 Company’s quarterly and annual SEC filings, attesting to their purporting accuracy.

10 317. Defendant Ellison is, and was at all relevant times, Oracle’s Chief Technology  
11 Officer, as well as the Chairman of the Company’s Board of Directors. The Company’s proxy  
12 statements state that Ellison “continues to lead and oversee our product engineering, technology  
13 development and strategy” and his “familiarity with and knowledge of [Oracle’s] technologies and  
14 product offerings are unmatched.” According to Catz, Defendant Ellison “led the transformation  
15 to the cloud,” and is still “in charge” at Oracle even after becoming the Company’s CTO in 2014,  
16 noting “don’t let titles fool you.” In addition, Ellison signed the Company’s 2017 Annual Report  
17 as a member of the Company’s Board of Directors.

18 318. As a result of the foregoing, each of these Defendants, as a group and individually,  
19 were controlling persons of Oracle within the meaning of Section 20(a) of the Exchange Act.

20 319. As set forth above, Oracle violated Section 10(b) of the Exchange Act by its acts  
21 and omissions as alleged in this Complaint.

22 320. By virtue of their positions as controlling persons of Oracle and as a result of their  
23 own aforementioned conduct, Defendants Catz, Hurd, and Ellison are liable pursuant to Section  
24 20(a) of the Exchange Act, jointly and severally with, and to the same extent as, the Company is  
25 liable under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, to Lead  
26 Plaintiff and the other members of the Class who purchased or otherwise acquired Oracle common  
27 stock. As detailed above, during the respective times these Defendants served as officers and/or  
28

1 directors of Oracle, each of these Defendants was culpable for the material misstatements and  
2 omissions made by Oracle.

3 321. As a direct and proximate result of these Defendants' conduct, Lead Plaintiff and  
4 the other members of the Class suffered damages in connection with their purchase or acquisition  
5 of Oracle common stock.

### 6 COUNT III

#### 7 For Violation Of Section 20A Of The Exchange Act 8 (Against Defendant Kurian)

9 322. Lead Plaintiff repeats and realleges each and every allegation contained above as if  
10 fully set forth herein.

11 323. This Count is asserted pursuant to Section 20A of the Exchange Act against  
12 Defendant Kurian on behalf of all persons who purchased Oracle common stock  
13 contemporaneously with any sales of Oracle common stock by Defendant Kurian during the Class  
14 Period.

15 324. As set forth in the paragraphs above, and as further set forth in the chart below,  
16 Defendant Kurian committed underlying violations of Section 10(b) and Rule 10b-5 thereunder by  
17 selling Oracle common stock while in the possession of material, adverse, nonpublic information  
18 about, among other things, the Company's misleading cloud sales practices and revenue. This  
19 conduct violated Section 20A of the Exchange Act.

20 Defendant	Transaction Dates	Shares Sold	Price Per Share	Total Value (\$)
21 KURIAN	07/18/17	750,000	\$50.46	\$37,843,275
22 KURIAN	01/18/18	1,500,000	\$50.29	\$75,433,950
23 KURIAN	01/18/18	200,000	\$50.29	\$10,057,860
24 KURIAN	04/23/18	137,843	\$46.13	\$6,358,698
25 KURIAN	04/26/18	300,000	\$46.06	\$13,818,000
26 KURIAN	04/27/18	25,600	\$46.06	\$1,179,136
27 KURIAN	04/30/18	57,155	\$46.00	\$2,629,130
28 KURIAN	05/02/18	91,888	\$45.85	\$4,213,065



Defendant	Transaction Dates	Shares Sold	Price Per Share	Total Value (\$)
<b>KURIAN</b>	05/02/18	253,877	\$45.85	\$11,640,260
<b>KURIAN</b>	05/03/18	333,637	\$45.15	\$15,063,711
<b>KURIAN</b>	05/04/18	300,000	\$45.15	\$13,545,000
<b>Kurian Totals</b>		<b>3,950,000</b>		<b>\$191,782,084</b>

325. Lead Plaintiff purchased shares of Oracle common stock contemporaneously with certain sales of Oracle common stock made by Defendant Kurian while he was in possession of material, adverse, nonpublic information, as set forth in the chart below. These sales and purchases were contemporaneous within the meaning of Section 20A of the Exchange Act.

Defendants' Open Market Sales				Lead Plaintiff's Purchases		
Defendant	Sale Date	Shares Sold	Price	Purchase Date	Shares Purchased	Price
<b>Kurian</b>	7/18/17	750,000	\$50.46	7/19/17	205,000	\$50.99
					115,800	\$50.99
					28,000	\$50.99
					3,600	\$50.99
					2,600	\$50.99
				7/28/17	48,000	\$50.18
<b>Kurian</b>	1/18/18	1,500,000	\$50.29	1/22/18	10,000	\$50.45
<b>Kurian</b>	1/18/18	200,000	\$50.29			

326. Numerous other Class members also purchased Oracle common stock contemporaneously with Defendant Kurian's sales of stock during the Class Period based on material, adverse, nonpublic information.

327. By virtue of his knowledge of material, adverse, nonpublic information, Defendant Kurian was duty bound not to benefit therefrom, a duty which he violated by selling his shares at inflated prices.

328. Accordingly, under Section 20A of the Exchange Act, Defendant Kurian is liable to Lead Plaintiff and the Class for all profits gained and losses avoided as a result of his stock sales.

1 **XIII. PRAYER FOR RELIEF**

2 WHEREFORE, Lead Plaintiff prays for judgment as follows:

- 3 A. Determining that this action is a proper class action under Rule 23 of the Federal  
4 Rules of Civil Procedure;
- 5 B. Awarding compensation to Lead Plaintiff and other Class members against all  
6 Defendants, jointly and severally, for all harm sustained as a result of Defendants'  
7 wrongdoing, in an amount to be proven at trial, including interest thereon;
- 8 C. Awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred  
9 in this action, including attorneys' fees and expert fees; and
- 10 D. Awarding such equitable/injunctive or other further relief as the Court may deem  
11 just and proper.

12 **XIV. JURY DEMAND**

13 Lead Plaintiff demands a trial by jury.

14 Dated: March 8, 2019

Respectfully submitted,

15 **BERNSTEIN LITOWITZ BERGER**  
16 **& GROSSMANN LLP**

17 /s/ John Rizio-Hamilton  
18 John Rizio-Hamilton

19  
20 MARK LEBOVITCH (admitted *pro hac vice*)  
21 JOHN RIZIO-HAMILTON (admitted *pro hac vice*)  
22 ABE ALEXANDER (admitted *pro hac vice*)  
23 JULIA K. TEBOR (admitted *pro hac vice*)  
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-and-

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Holding AG and Lead Counsel for the Class*

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**CERTIFICATE OF SERVICE**

I, John Rizio-Hamilton, hereby certify that on March 8, 2019, I caused a true and correct copy of the foregoing CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS to be filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

/s/ John Rizio-Hamilton  
JOHN RIZIO-HAMILTON

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