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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN MATEO

17 In re MICRO FOCUS INTERNATIONAL)
PLC SECURITIES LITIGATION)

Lead Case No. 18CIV01549

18 _____)

CLASS ACTION

19 This Document Relates To:)

SECOND AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE SECURITIES ACT
OF 1933

20 ALL ACTIONS.)

21 _____)

DEMAND FOR JURY TRIAL

Assigned for All Purposes to:
Hon. Marie S. Weiner, Dept. 2
Date Action Filed: 03/28/18

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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 10/1/2021
By /s/ Priscilla Tovar
Deputy Clerk

1 Plaintiffs James Ragsdale, Cardella Family Irrevoc Trust U/A 06/17/15 (“Cardella Family
2 Trust”), Ian Green, James Gildea, and Marilyn Clark (“Plaintiffs”) individually, and on behalf of all
3 others similarly situated, by Plaintiffs’ undersigned attorneys, for Plaintiffs’ Consolidated Complaint
4 against Defendants, allege the following based upon personal knowledge as to Plaintiffs and
5 Plaintiffs’ own acts, and upon information and belief as to all other matters, based on the investigation
6 conducted by and through Plaintiffs’ attorneys, which included, among other things, a review of
7 Micro Focus International plc (“Micro Focus” or “the Company”) press releases and call transcripts,
8 Securities and Exchange Commission (“SEC”) filings, investigative interviews with former Micro
9 Focus and HPE employees, analyst and media reports, and other commentary, analysis, and
10 information concerning Micro Focus and the industry within which it operates. Plaintiffs’
11 investigation into the matters alleged herein is continuing and many relevant facts are known only to
12 Defendants, or are exclusively within their custody and control. Plaintiffs believe that substantial
13 additional evidentiary support will exist for the allegations set forth herein after a reasonable
14 opportunity for formal discovery.

15 **NATURE AND SUMMARY OF THE ACTION**

16 1. Plaintiffs bring this action under §§11, 12(a)(2), and 15 of the Securities Act of 1933
17 (the “Securities Act”), against Micro Focus and certain of the Company’s directors, senior executives,
18 and authorized representatives (collectively, “Defendants”), on behalf of Plaintiffs and all other
19 persons or entities, except for Defendants, who purchased or otherwise acquired American Depositary
20 Shares (“ADSs”) of Micro Focus, pursuant to the interrelated Registration Statements on Forms F-4
21 and F-6 and Prospectus (together, the “Offering Documents”)¹ issued in connection with the merger
22 of Micro Focus with Hewlett Packard Enterprise Company (“HPE”) and their subsidiaries, pursuant
23 to which Micro Focus combined with the software business segment of HPE (the “Merger”).

24 2. By this action, Plaintiffs, on behalf of themselves and the other Class members who
25 also purchased or acquired Micro Focus ADSs in the Merger, now seek to obtain a recovery for the
26

27 ¹ See paragraph 49 for a more complete description of the interrelated Offering Documents.
28

1 damages they and the Class have suffered as a result of Defendants' violations of the Securities Act,
2 as alleged herein.

3 3. Furthermore, because this case involves Registration Statements, Defendants also had
4 an independent, affirmative duty to provide adequate disclosures about adverse conditions, risks, and
5 uncertainties. See Item 303 of SEC Reg. S-K, 17 C.F.R. §229.303(a)(3)(ii). Thus, Defendants had
6 an affirmative duty to ensure that the Offering Documents and the materials incorporated therein
7 disclosed material trends and uncertainties that they knew or should have reasonably expected would
8 have a materially adverse impact on Micro Focus's business. Defendants failed to fulfill this
9 obligation.

10 4. Micro Focus is a software company that provides software and consultancy services.
11 Based in the United Kingdom, the Company has extensive California operations. On September 7,
12 2016, Micro Focus announced a proposed merger with HPE Software, the software business of HPE.
13 To consummate the Merger, Micro Focus would issue newly registered ADSs to HPE shareholders
14 by means of the Offering Documents.

15 5. The Merger was completed on September 1, 2017. The terms of the transaction were
16 such that Micro Focus issued more than 222 million consideration shares to HPE shareholders. The
17 ADSs issued in the Merger closed at \$28.81 per ADS, representing over \$6.4 billion in total market
18 value. Notably, HPE shareholders never voted on the Merger.

19 6. In the Offering Documents used to conduct the Merger, Defendants repeatedly touted
20 Micro Focus's ability to "enhance shareholder returns," "accelerate operational effectiveness,"
21 "achieve operational efficiencies," and "create significantly greater scale and breadth of product
22 portfolio." In addition, the Offering Documents repeatedly made statements about its successful track
23 record of executing and integrating strategic acquisitions.

24 7. Defendants, however, failed to disclose a number of problems seriously undermining
25 Micro Focus's business and prospects. The Offering Documents' representations were materially
26 untrue, inaccurate, misleading, and/or incomplete because they failed to disclose, *inter alia*, that, by
27 the time of the issuance of the Offering Documents in August 2017: (a) there were serious and
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1 inherent compatibility issues with the Merger of the two companies; (b) the Merger would create
2 insurmountable sales force hurdles including massive attrition; (c) that HPE divisions (such as
3 Autonomy) had lagging products; and (d) because of these issues, the total enterprise value for the
4 Merger was materially inflated and, in fact, laid bare the reckless acquisition strategy undertaken by
5 Micro Focus.

6 8. In the weeks and months following the completion of the Merger, Micro Focus made
7 a series of announcements which put to lie the representations in the Offering Documents. Indeed,
8 Micro Focus announced revenue declines, lowered guidance, significant sales staff changes, the loss
9 of key personnel, sales execution issues, operational improvement plans, and executive (including
10 CEO) departures. As these facts were disclosed, and as other information concerning the nature and
11 extent of the massive problems facing Micro Focus became public, the price of Micro Focus shares
12 dropped significantly, far below the \$28.81 per share Merger closing price. On March 22, 2018,
13 shortly before this consolidated action was filed, the price of Micro Focus ADSs closed at \$12.99 per
14 share, representing a decline of more than 54% from the Merger closing price of the ADSs. By this
15 action, Plaintiffs, on behalf of themselves and the other Class members who also acquired Micro
16 Focus shares pursuant and/or traceable to the Merger, now seek to obtain a recovery for the damages
17 they have suffered as a result of Defendants' violations of the Securities Act, as alleged herein.

18 **JURISDICTION AND VENUE**

19 9. This Court has subject matter jurisdiction over the causes of action asserted herein
20 pursuant to the California Constitution, Article VI, §10, because this case is a cause not given by
21 statute to other trial courts. This action is not removable. The claims alleged herein arise under §§11,
22 12(a)(2), and 15 of the Securities Act. *See* 15 U.S.C. §§77k, 77l(a)(2), and 77o. Jurisdiction is
23 conferred by §22 of the Securities Act and venue is proper pursuant to §22 of the Securities Act. *See*
24 15 U.S.C. §77v. Section 22(a) of the Securities Act explicitly states that “[e]xcept as provided in
25 section 16(c), no case arising under this title and brought in any State court of competent jurisdiction
26 shall be removed to any court of the United States.” *Id.*

1 17. Plaintiff Marilyn Clark acquired Micro Focus ADSs in the Merger and was damaged
2 thereby.

3 **B. Defendants**

4 18. Defendant Micro Focus is a multinational software and information technology
5 business based in Newbury, Berkshire, United Kingdom. The firm provides software and
6 consultancy. Micro Focus ADSs trade on the New York Stock Exchange under the ticker symbol
7 “MFGP.” Micro Focus conducts significant operations in the State of California. The Company’s
8 website lists five offices within the state: Costa Mesa, Pleasanton, Rocklin, Santa Clara, and
9 Sunnyvale. Micro Focus and its subsidiaries maintain a presence in at least 13 additional California
10 locations, including Chula Vista, Cupertino, Elk Grove, Hayward, Mountain View, Palm Desert, Palo
11 Alto, Sacramento, San Diego, San Jose, San Mateo, Santa Ana, and Union City. Of the Company’s
12 subsidiaries, ArcSight LLC is located in Cupertino; Stratify Inc. is located in Mountain View; Entco
13 Andromeda LLC is located in Palo Alto; Serena Software is located in San Mateo; and Borland Corp
14 has a development center in Santa Ana.

15 19. Defendant Christopher Hsu (“Hsu”) served as the Chief Executive Officer (“CEO”)
16 and a director of Micro Focus from September 1, 2017, the date the Merger closed, until his
17 resignation in March 2018. Prior to becoming the CEO of Micro Focus, Hsu served as the Chief
18 Operating Officer (“COO”) of HPE and the Executive Vice President and General Manager of HPE’s
19 software business segment, HPE Software, which was acquired by Micro Focus in the Merger. Hsu
20 is a resident of California and worked in Sunnyvale, California. Hsu was previously a Managing
21 Director at Kohlberg Kravis Roberts (“KKR”) from December 2013 to May 2014, and prior to that
22 an executive at a KKR affiliate, KKR Capstone, from November 2008 to December 2013. In a section
23 of the Offering Documents entitled “*Proposed Directors’ (Chris Hsu) service contract,*” the Offering
24 Documents stated that “Chris Hsu has entered into a service agreement with Micro Focus (U.S.) Inc.
25 dated January 16, 2017, pursuant to which, with effect from Closing, Chris Hsu will become Chief
26 Executive Officer of the Enlarged Group.” The Offering Documents also explained that Hsu’s service
27 agreement “contains summary termination provisions similar to [all of] the Executive Directors,” all
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1 of whom had “service contracts with Micro Focus.” Since at least 2005 (the earliest annual report
2 available on Micro Focus’s website), Micro Focus has used service contracts to designate executives
3 as directors. In its 2005 Annual Report, for example, Micro Focus explained that “executive directors
4 are employed subject to service contracts.” Micro Focus has never filed service contracts with the
5 SEC, but instead discloses that it makes them “available for inspection at the Company’s registered
6 office.” Additionally, the Offering Documents extensively discussed Hsu’s background and
7 contemplated roles as an executive and director of Micro Focus following the Merger.

8 20. Defendant Stephen Murdoch (“Murdoch”) served as the CEO and a director of Micro
9 Focus until he was replaced in those positions by Hsu as a result of the Merger, after which Murdoch
10 became the Company’s COO. Murdoch once again became CEO and a director of the Company after
11 defendant Hsu’s resignation in March 2018. Defendant Murdoch signed or authorized the signing of
12 the false and misleading Offering Documents.

13 21. Defendant Mike Phillips (“Phillips”) served as the Chief Financial Officer (“CFO”)
14 and a director of Micro Focus at the time of the Merger. On January 8, 2018, Micro Focus announced
15 that Phillips would be leaving his CFO role to serve as the Company’s Director of Mergers and
16 Acquisitions (“M&A”). Defendant Phillips signed or authorized the signing of the false and
17 misleading Offering Documents.

18 22. Defendant Kevin Loosemore (“Loosemore”) served as the Executive Chairman of
19 Micro Focus at the time of the Merger. Defendant Loosemore signed or authorized the signing of the
20 false and misleading Offering Documents.

21 23. Defendant Nils Brauckmann (“Brauckmann”) served as the CEO of Micro Focus’s
22 SUSE segment and a director of the Company’s board (the “Board”) at the time of the Merger.
23 Defendant Brauckmann signed or authorized the signing of the false and misleading Offering
24 Documents.

25 24. Defendant Karen Slatford (“Slatford”) was, at the time of the Merger, a director of the
26 Company. Defendant Slatford signed or authorized the signing of the false and misleading Offering
27 Documents.

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1 25. Defendant Richard Atkins (“Atkins”) was, at the time of the Merger, a director of the
2 Company. Defendant Atkins signed or authorized the signing of the false and misleading Offering
3 Documents.

4 26. Defendant Amanda Brown (“Brown”) was, at the time of the Merger, a director of the
5 Company. Defendant Brown signed or authorized the signing of the false and misleading Offering
6 Documents.

7 27. Defendant Silke Scheiber (“Scheiber”) was, at the time of the Merger, a director of the
8 Company. Defendant Scheiber signed or authorized the signing of the false and misleading Offering
9 Documents.

10 28. Defendant Darren Roos (“Roos”) was, at the time of the Merger, a director of the
11 Company. Defendant Roos signed or authorized the signing of the false and misleading Offering
12 Documents.

13 29. Defendant John Schultz (“Schultz”) as stated in the Offering Documents, would
14 become a director of the Company following the Merger. On December 20, 2017, Micro Focus
15 announced that Schultz would leave the Board. Defendant Schultz continues to serve as the Chief
16 Legal and Administrative Officer and Corporate Secretary of HPE. Schultz works at HPE’s corporate
17 headquarters in Palo Alto, California. Schultz was HPE’s EVP, General Counsel and Secretary since
18 November 2015; performed a similar role at HP from April 2012 to November 2015; served as Deputy
19 General Counsel for Litigation, Investigations and Global Functions at HP from September 2008 to
20 April 2012; and was a partner at the law firm of Morgan, Lewis & Bockius LLP from March 2005 to
21 September 2008. In a section of the Offering Documents, Schultz’s designation as a director is
22 described, in relevant part, as follows: “The current Nomination Committee has approved the
23 appointment[] of John Schultz (as the HPE Nominated Director who is a serving executive of HPE
24 and is not independent) with effect from Closing” In a separate section entitled “*Proposed Non-*
25 *Executive Director’s letter of appointment,*” the Offering Documents further described Schultz’s
26 appointment as an incoming director: “The letter of appointment between John Schultz, the HPE
27 Nominated Director who is a serving executive of HPE, and Micro Focus is on substantially the same
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1 terms as the existing Non-Executive Directors, save that there shall be no fee payable to John
2 Schultz.” Since at least 2005, Micro Focus has used letters of appointment to designate non-
3 executives as directors. In its 2005 Annual Report, for example, Micro Focus explained that “[n]on-
4 executive directors are appointed by letter of appointment for periods not exceeding three years.”
5 Micro Focus has never filed letters of appointment with the SEC, but instead discloses that it makes
6 them “available for inspection at the Company’s registered office.” The Offering Documents
7 discussed the terms of the letters of appointment in a section entitled “*Non-Executive Directors’*
8 *letters of appointment.*” Additionally, as with all other directors and incoming directors, the Offering
9 Documents extensively discussed Schultz’s background and qualifications.

10 30. The defendants listed in paragraphs 19-29 are collectively referred to herein as the
11 “Individual Defendants.”

12 31. The Individual Defendants each participated in the preparation of and, other than
13 Defendants Hsu and Schultz, signed (or authorized the signing of) the Offering Documents. The
14 Individual Defendants who signed (or authorized the signing of) the Registration Statement are
15 strictly liable for the materially untrue and misleading statements incorporated into the Registration
16 Statement. The Individual Defendants, because of their positions with the Company, possessed the
17 power and authority to control the contents of the Company’s reports to the SEC, press releases, and
18 presentations to securities analysts, money and portfolio managers, and institutional investors, *i.e.*,
19 the market. Additionally, Defendants Hsu and Schultz are liable to the same extent as the other
20 Individual Defendants because they consented to be named in the Registration Statement as incoming
21 directors.

22 32. Defendant HPE was the owner of HPE Software prior to the Merger. HPE is a publicly
23 traded corporation headquartered in Palo Alto, California. HPE exercised control over the Merger as
24 the Merger could never have happened without HPE’s agreement and action. HPE also exercised
25 control of the Merger and otherwise controlled primary violators of the securities laws by having two
26 of its senior officers (Defendants Hsu and Schultz) serve as members of the Micro Focus board
27 following the Merger. HPE participated in the preparation and dissemination of the Offering
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1 Documents and the Offering Documents contained information about Defendants Schultz and Hsu
2 that would not have been included without their and HPE's consent.

3 **SUBSTANTIVE ALLEGATIONS**

4 **A. MICRO FOCUS AND ITS BUSINESS**

5 33. Micro Focus is a multinational software and information technology business based in
6 Newbury, Berkshire, United Kingdom. The firm provides software and consultancy. Micro Focus
7 engages in the management of mature infrastructure software assets to help organizations leverage
8 additional value from their investments in critical IT infrastructure and business applications. It
9 operates through the following segments: Micro Focus Product Portfolio ("Existing Products") and
10 SUSE Product Portfolio. The Existing Products segment comprises of host connectivity; identity;
11 access and security; development and information technology operations management tools; and
12 collaboration and networking. The SUSE Product Portfolio segment provides and supports
13 enterprise-grade linux and open source solutions.

14 34. The Company prided itself on its allegedly unique strategy that "focused obsessively
15 on shareholder returns" and repeatedly touted a 15% to 20% customer return policy. Indeed, in July,
16 2016, just prior to announcing the Merger, Defendant Loosemore stated that "our ongoing business
17 model assumes no acquisitions. So, we build a base plan where we're going to deliver 15% to 20%
18 return without acquisitions"

19 35. At the same time, however, the Company built its reputation on acquiring other
20 companies. Indeed, it was once referenced as "a software group that digs out spare change from
21 behind the sofa." To enable both these business models (acquisitions and shareholder return) to co-
22 exist, Micro Focus also focused on slashing costs. It often touted itself as having a track record of
23 driving efficiencies with respect to acquisitions.

24 36. However, Micro Focus actually did not have a track record of driving efficiencies with
25 respect to new acquisitions or mergers. In particular, when Micro Focus merged with Attachmate
26 Group ("Attachmate") in September 2014, there were similar expectations and pronouncements of
27 profit and earnings margin opportunities as those complained of herein. When the acquisition was
28

1 final, Micro Focus released financial reports showing an EBITDA of over \$509 million for the
2 combined entity. Because Attachmate came into the Merger with over \$956 million in revenues,
3 expectations were that there would be significant opportunity for improved earnings margins and
4 profits. By July 2016 though, as Micro Focus was already deep in negotiations with HPE regarding
5 the Merger, the EBITDA of Micro Focus was stagnated around \$530 million – barely an
6 “improvement.”

7 37. In addition, Micro Focus’s acquisition of Serena Software (“Serena”) in May 2016
8 was likewise touted as an opportunity for increased profits and margin opportunities. Serena’s
9 performance was also a disappointment for Micro Focus, as exceptional costs exceeded analyst
10 expectations. Indeed, Micro Focus’s 2016 Annual Report and Accounts notes that “As with prior
11 transactions we expect Serena’s revenue trend to continue its historic decline[.]” One Credit Suisse
12 analyst pointed out that the exceptional costs related to Serena were higher than expected.

13 38. Finally, Micro Focus lost a third of its value when it acquired a division of Compuware
14 in 2009-2010. Therefore, far from a proven track record of improving efficiencies, Micro Focus had
15 a history of struggling with acquisitions and was well aware of the hurdles it faced with the HPE
16 Merger.

17 **B. BACKGROUND OF HPE AND ITS NEGOTIATIONS WITH MICRO FOCUS**

18 39. On November 1, 2015, Hewlett-Packard Company separated into two new publicly-
19 traded Companies, HPE and HP Inc. During a January 2016 meeting of HPE’s Board of Directors,
20 discussion was first held regarding a potential separation and/or potential merger of non-core software
21 assets (“HPE Software”) with a third party. In April 2016, Micro Focus executives discussed a
22 transaction with HPE Software. In April 2016, Micro Focus and HPE executed a mutual non-
23 disclosure agreement as part of their consideration of a transaction. In June 2016, Micro Focus
24 submitted an indication of interest to HPE proposing a spin-merge transaction for HPE Software. In
25 June and July 2016, at the direction of HPE’s Board, HPE management contacted Micro Focus to
26 gauge its interest in the transaction involving HPE Software and thereafter provided access to a virtual
27 data room containing certain confidential information regarding HPE Software to Micro Focus.

1 Members of HPE’s management also held in-person management presentations and due diligence
2 sessions regarding HPE Software with representatives of Micro Focus.

3 40. In July 2016, representatives of HPE, Goldman Sachs & Co. (“Goldman Sachs,” who
4 served as HPE’s financial advisor) and Wachtell, Lipton, Rosen & Katz (“Wachtell,” who was HPE’s
5 legal counsel) and representatives of Micro Focus, J.P. Morgan Cazenove (Micro Focus’s financial
6 advisor), and Kirkland Ellis LLP (“K&E” who was Micro Focus’s legal counsel) negotiated the terms
7 of a preliminarily indicated term sheet for the spin-merge transaction. On July 22, 2016, Micro Focus
8 submitted a revised non-binding indication of interest. On July 27, 2016, the HPE Board reviewed
9 with management and representatives of Goldman Sachs, the status of discussions regarding HPE
10 Software, and the HPE Board directed management and HPE’s financial and legal advisors to
11 prioritize its discussions with Micro Focus. On August 1, 2016, Micro Focus submitted a final version
12 of their final non-binding indication of interest which had been negotiated with HPE’s management.

13 41. On August 28, representatives of HPE, Goldman Sachs, Wachtell Lipton, Micro
14 Focus, and K&E met at the offices of HPE in Palo Alto, California to discuss and finalize the terms
15 of the proposed transaction and the timeline for the announcement of the Merger. On September 5th
16 and 6th, 2016, the boards of Micro Focus and HPE voted to approve the transaction.

17 **C. MICRO FOCUS ANNOUNCES THE PROPOSED MERGER WITH HPE**
18 **SOFTWARE**

19 42. On September 7, 2016, Micro Focus announced the proposed Merger with HPE
20 Software, the software business segment of HPE. According to the Company, Micro Focus would
21 issue newly registered ADSs to HPE shareholders as consideration in the Merger. In addition, HPE
22 would receive \$2.5 billion, financed through newly incurred indebtedness, of HPE Software, and
23 Micro Focus shareholders would receive a \$400 million return of value prior to completion.
24 Immediately following the completion of the Merger, HPE shareholders would own 50.1% of the
25 fully diluted share capital of the combined company. Importantly, Defendants announced the
26 proposed Merger one year prior to the consummation of the Merger, meaning that they had a full year
27 to undertake due diligence prior to issuing the Offering Documents.

1 43. The Merger was a major acquisitive undertaking for the Company; with a valuation of
2 \$8.8 billion, the Merger was larger than Micro Focus’s market capitalization at the time. Micro Focus
3 described the Merger as a “[r]are opportunity to increase significantly Micro Focus’ scale and breadth
4 through the combination with a business operating in adjacent and complementary product areas with
5 similar characteristics and benefitting from a high proportion of recurring revenues and strong cash
6 conversion.” The Company also stated that the Merger would result in “annual revenues of US\$45
7 billion and EBITDA of US\$1.35 billion.” Defendant Loosemore, Micro Focus’s Executive Chairman
8 at the time, stated that the Merger would create “one of the world’s largest infrastructure software
9 companies with leading positions across a number of key products,” and would represent “a
10 compelling opportunity to create significant value for both companies’ shareholders.”

11 44. After the announcement of the Merger, Defendants repeatedly sold it by stating that
12 the Merger would create the “seventh largest pure play software company in the world.” Micro Focus
13 executives continually touted the efficiencies and opportunities of the combined business during the
14 one year between announcement and finalization. Defendant Loosemore stated, “We believe there’s
15 significant margin opportunity to improve from the 21% margin in the current HP business. We have
16 a track record of driving efficiencies. There is nothing we need to do which is different than we’ve
17 done in any of our previous acquisitions. It’s just bigger and larger scale, but as we’ve discussed with
18 many of you, we’ve been building the management team over the prior year to accommodate that.”
19 Defendant Loosemore further noted that the Merger was similar to Micro Focus’s prior Attachmate
20 acquisition, saying that Micro Focus “fundamentally will take the same approach as we did with the
21 Attachmate Group.”

22 45. A significant portion of the assets Micro Focus would acquire in the Merger consisted
23 of the troubled assets of the former British software firm Autonomy Corporation plc (“Autonomy”),
24 which had been acquired by Hewlett-Packard Company (“HP”), a predecessor entity to HPE, in 2011
25 in a deal valued at \$10.3 billion. In 2012, HP recorded an \$8.8 billion impairment charge related to
26 the write-down of goodwill and intangible assets from its acquisition of Autonomy. It therefore
27 proved to be a disastrous deal for HP that resulted in a write-off of almost the entire value of
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1 Autonomy. HP subsequently accused Autonomy of fraud and accounting misrepresentations.
2 Ultimately, in addition to other regulatory investigations into the HP-Autonomy deal and litigation
3 between HP and former officers of Autonomy, the U.S. Department of Justice obtained a fraud
4 conviction against Autonomy's former CFO on April 30, 2018.

5 46. During the one year pendency of the proposed Merger, Micro Focus publicly stated
6 that the past problems with Autonomy (or the "curse of Autonomy") would not impact the quality of
7 the assets received by Micro Focus in the Merger. On an earnings call in July 2017, Defendant
8 Loosemore, hoping to reassure investors wary of the impact of the Autonomy assets on Micro Focus,
9 denied that Autonomy would be a "significant part of HPE," given that "[t]he current revenues from
10 Autonomy products in HPE Software are less than 10% of the revenues of HPE, and most of those
11 are SaaS [software as a service]." He stated further: "Now some of you will now go and look and
12 see what the revenues of Autonomy were when it was sold to HPE, and that will raise a very
13 interesting question as to which of the two managements were right in their prognosis. Was it inflated
14 revenue or is it mismanaged after the event? I don't actually care. We know what we're getting, and
15 it's less than 10% of the revenues." However, public documents estimate the Autonomy business to
16 be 1/4th to 1/5th of the acquired HPE assets.

17 47. Micro Focus estimated that the completion of the Merger would occur in the third
18 quarter of 2017, or nearly a year after its announcement. The Company told the market that Micro
19 Focus was working to ensure a successful integration and transition for the combined company. On
20 May 9, 2017, during an earnings call with analysts and investors, Defendant Loosemore indicated
21 that the Merger was on track, stating: "We are encouraged by the early progress that HPE Software's
22 management are making on implementing operational efficiencies and the speed of change in the
23 business." On July 12, 2017, Micro Focus held an earnings call to discuss its preliminary financial
24 results for the fiscal quarter and year ended April 30, 2017. Defendant Murdoch, the then-CEO of
25 the Company, stated that Micro Focus had deployed integration teams which were "all managed under
26 a common governance structure, tracking more than 10,000 very specific tasks through to
27 completion" in order to lay out the operational aspects of the combined company. Loosemore
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1 likewise gave an update on the integration progress: “The HPE transaction, milestones completed,
2 all regulatory approvals done, 99.99% shareholder approval, due to file the F-4 [Registration
3 Statement] at the end of this week, Prospectus due to go out fairly shortly. And you’ve seen we’ve
4 refinanced on fairly good terms.” He stated that the Merger was expected to be completed September
5 1, 2017, and that the new business would be “fully integrate[d]” by November 1, 2017.

6 48. In the meantime, Micro Focus shareholders approved the Merger on May 26, 2017.
7 HPE shareholders did not vote on the deal.

8 **D. THE MERGER, NATURE OF THE ADSs, AND THE INTERRELATED OFFERING**
9 **DOCUMENTS**

10 49. On August 4, 2017, Micro Focus and HPE caused to be filed with the SEC two
11 interrelated registration statements, a Form F-4 relating to the deposit and exchange of securities for
12 the ADSs and containing substantive representations regarding the Merger and the companies, and a
13 Form F-6 for the related Deposit Agreement and American Depository Receipts (“ADRs”)
14 representing the ADSs to be issued in the Merger. The Form F-4 was amended on August 15, 2017
15 and declared effective that same day (the “Registration Statement”). On August 22, 2017, Micro
16 Focus filed a prospectus for the ADSs to be issued in the Merger on Form 424B3, which incorporated
17 and formed a part of the Registration Statement (the “Prospectus”). Pursuant to the Form F-4 and
18 SEC regulations, and as required under the Merger Agreement, Micro Focus was required to file the
19 Form F-6 to concurrently register the ADRs representing the ADSs. But the Form F-6 is very limited
20 in nature and the necessary substantive disclosures for the Merger and the ADSs were required to be
21 made on the related and concurrently-filed Form F-4 that was a prerequisite to the Form F-6. Thus,
22 in order to have the ADSs trade on American stock exchanges, Micro Focus concurrently filed the
23 Form F-4. The Registration Statements (Forms F-4 and F-6) and Prospectus are collectively referred
24 to herein as the “Offering Documents.”

25 50. The Form F-4 sets forth the exact process and steps for technically registering the
26 ADSs. This process is required because of the international nature of the Merger and because the
27 ADSs and the deposited securities are separate securities. Those steps were as follows:
28

- 1 • Micro Focus first entered into the merger agreement with HPE, Seattle SpinCo,
2 Seattle Holdings, and Seattle MergerSub, pursuant to which Micro Focus
3 combined with the software business segment of HPE.
- 4 • Micro Focus then filed the Registration Statement (containing the
5 misstatements and omissions discussed herein) in order to register outstanding
6 shares of all “Seattle Class A common stock” created from that initial merger.
- 7 • The Seattle Class A shares were then deposited with a depository in the United
8 States, Deutsche Bank Trust Company Americas (“Depository”) and for every
9 share of HPE common stock held of record as of the close of business on
10 August 21, 2017, HPE shareholders received one share of Seattle Class A
11 common stock.
- 12 • Following the closing of the Merger, each Seattle Class A share was
13 automatically converted into the right to receive Micro Focus ADSs.
- 14 • In order to officially register those ADSs, the Depository filed a registration
15 statement on Form F-6 linking the ADRs to the ADSs that the ADRs
16 represented and the deposited securities in the underlying transactions.

17 51. Specifically, the Merger Agreement required “Micro Focus . . . to prepare and use its
18 reasonable best efforts to cause the Depository to file a registration statement on Form F-6 relating to
19 the registration of the Micro Focus ADSs under the Securities Act and to cause such Form F-6 to be
20 declared effective.” Similarly, the F-4 itself stated that “[t]he Micro Focus ADSs will be issuable
21 upon deposit of ordinary shares with Deutsche Bank Trust Company Americas, acting as the
22 depository, and will be registered under a registration statement on Form F-6 (Registration No. 333-
23).”

24 52. While the Form F-4 (registering the Seattle Class A shares) and the F-6 (registering
25 Micro Focus ADSs) are separate documents, they go hand in hand legally and logically. SEC Release
26 No. 52 specifically requires that, to file a Form F-6 and register ADSs, a company is required to
27 concurrently file a registration statement on another form (here, the Form F-4). Therefore, one
28

1 document completely depends on the other. Indeed, the Form F-4 clearly states that the entire
2 transaction was subject to both the effectiveness of the Form F-4 and the Prospectus and the filing of
3 the Form F-6.

4 53. The Form F-6 is basic and, pursuant to SEC guidance, contains no substantive
5 disclosures. However, it is tied to the accompanying Form F-4 which contains the necessary
6 substantive disclosures.

7 54. In this case, the cover of the Form F-6 specifically denoted that a separate registration
8 statement had been filed to register the deposited shares, thus cross referencing the Form F-4.

9 55. And while the Form F-4 registered only the “Seattle Class A” shares, this is a mere
10 technicality. In fact, the Form F-4 repeatedly references and refers to the ADSs. For example:

- 11 • It states that the securities being offered “hereby” (i.e. by the F-4) “will be
12 issued in the form of American Depositary Shares of the registrant, referred to
13 as Micro Focus ADSs.”
- 14 • It discusses that the consummation of the entire transaction was dependent on
15 the filing of the “Form F-6 filed with the SEC by the Depository with respect
16 to Micro Focus ADSs....”
- 17 • The cover page of the Amended F-4 expressly states that “[t]he securities being
18 offered hereby will be issued in the form of American Depositary Shares of the
19 registrant, referred to as Micro Focus ADSs.”
- 20 • In cautioning investors to read the Form F-4, it states that it contains “important
21 information about Micro Focus, HPE, Seattle, the Seattle Shares, the Micro
22 Focus Shares and the Micro Focus ADSs.”

23 56. Finally, the Prospectus ties the Form F-4 and the Form F-6 together. The 1933 Act
24 Section 5(b)(2) required Micro Focus to make the Prospectus (incorporated into the Registration
25 Statement) available to all acquirers of ADSs. Likewise, in a section entitled “Where You Can Find
26 More Information” in the Prospectus, it states that “*Micro Focus has filed . . . a Form F-4 . . . of*
27
28

1 which this information statement/prospectus forms a part . . . to register under the Securities Act the
2 Micro Focus Shares that HPE Stockholders will *receive in the form of Micro Focus ADSs.*”

3 **E. THE COMPANY’S MATERIALLY MISLEADING AND INCOMPLETE**
4 **OFFERING DOCUMENTS**

5 57. As alleged above, the registration statements on Forms F-4 and F-6 go hand in hand.
6 Micro Focus and its Depositary could not and did not issue the Micro Focus ADSs unless and until
7 the representations were made via the Form F-4 and indeed the registration of the securities could not
8 be accomplished and the Form F-6 permitted to be filed unless Micro Focus concurrently filed the F-
9 4. As such, the misleading statements in the Form F-4 and Prospectus were inextricably linked to the
10 Form F-6. Those Offering Documents were negligently prepared and, as a result, contained untrue
11 statements of material facts or omitted to state the facts necessary to make the statements not
12 misleading, and were not prepared in accordance with the rules and regulations governing their
13 preparation.

14 58. The Offering Documents included the following question-and-answer regarding the
15 market price of to-be-issued Micro Focus ADSs:

16 **Q: What is the estimated enterprise value of HPE Software and the**
17 **consideration to be received by holders of Seattle Shares in the Merger?**

18 A: The estimated *\$6.6 billion market value* of the Micro Focus ADSs to be issued to
19 holders of Seattle Shares (calculated for the purposes of this information
20 statement/prospectus by reference to the closing mid-market price of a Micro Focus
21 Share as of the close of business on July 27, 2017) and the \$2.5 billion Seattle Payment
22 imply *an enterprise value for HPE Software of approximately \$9.1 billion*. The
23 actual value of the Micro Focus Shares to be issued in the Merger and the Micro Focus
24 ADSs to be issued by the Depositary will depend on the market price of Micro Focus
25 Shares as of Closing.

26 [Emphasis added.]

27 59. The Offering Documents included the following among the “Reasons for Engaging”
28 in the Merger:

- the Merger “present[s] a rare opportunity to achieve a significant increase in Micro Focus’ scale and breadth, with the potential to deliver enhanced Total Shareholder Returns consistent with Micro Focus’ stated objectives.”

- 1 • the Merger was expected to “enhance Adjusted Earnings Per Share by April 30, 2019
2 and thereafter, with scope for further benefits as operational improvements are realized
3 across the Enlarged Group.”
- 4 • “significant cost benefits will arise from reducing duplicated central costs, combining
5 corporate support functions (where appropriate) and increasing efficiency across all
6 functions.”
- 7 • the Merger would “create significantly greater scale and breadth of product portfolio
8 covering largely adjacent areas of the software infrastructure market, thereby creating
9 one of the world’s largest pure-play infrastructure software companies;”
- 10 • the Merger would “add a substantial recurring revenue base to Micro Focus’ existing
11 product portfolio, together with access to important new growth drivers and new
12 revenue models;” and
- 13 • the Merger would “accelerate operational effectiveness over the medium term, through
14 the alignment of best practices between Micro Focus and HPE Software in areas such
15 as product development, support, product management, account management, and
16 sales force productivity, as well as achieving operational efficiencies where
17 appropriate.”

18 [Emphasis added.]

19 60. The Offering Documents also stated that the Merger would improve the businesses
20 coming over from HPE, stating that one benefit of the Merger was “*improved operating efficiencies
21 to enable HPE Software, combined with Micro Focus, to accelerate financial and operational
22 performance.*” The Offering Documents further stated that “HPE Software’s lack of a separate
23 general and administrative expense structure within HPE, scalability challenges (including in sales
24 and marketing), and demands on HPE management from HPE’s other businesses” could be addressed
25 in part via the Merger. Further to that point: “The HPE Board believed that a combination of HPE
26 Software with Micro Focus would help address these challenges by *creating a more focused, nimble
27 and scalable software business, particularly given Micro Focus’s historical experience with and
28 focus on effectively managing portfolios of mature infrastructure software products.*” Other
29 anticipated benefits of the Merger included the “convergence of businesses operating in adjacent and
30 complementary product areas in order to better serve customers as a global provider of infrastructure
31 software and the *improvement of the profitability of HPE Software through the application of Micro
32 Focus’ operating model.*” [Emphasis added.]

1 61. Despite incurring \$2.9 billion in new debt and guaranteeing an additional \$2.6 billion
2 through the Merger and related transactions, Micro Focus in the Offering Documents stated that the
3 Company’s “available liquidity and working capital will be sufficient for not less than the next 12
4 months following the date of this information statement/prospectus” and that the Company was
5 “targeting to reduce” its initial pro forma net debt to Facility EBITDA ratio “to its stated target of
6 2.5x Facility EBITDA within two years following Closing” from the 3.3x ratio expected at the
7 completion of the Merger.

8 62. The Offering Documents purported to describe in detail the Company’s extensive due
9 diligence of the HPE Software business it was acquiring undertaken over the course of the more-than-
10 one-year period since announcing the acquisition. According to the Offering Documents, “the parties
11 and their respective advisors engaged in mutual due diligence of Micro Focus’ business and HPE
12 Software, as applicable,” as early as late June 2016. During August and September 2016, “Micro
13 Focus and HPE and their respective legal advisors also negotiated the terms of various financing
14 arrangements for the transaction with various financial institutions during this period.” The Offering
15 Documents claimed that the HPE Board considered “*the potential value to HPE Stockholders of the*
16 *Micro Focus ADSs* representing 50.1% of the Micro Focus Fully Diluted Shares that they will own
17 immediately following the Merger, including value resulting from: (1) *the potential cost reductions*
18 *attributable to efficiencies and synergies* to be realized by combining HPE Software with Micro
19 Focus; and (2) *the benefits of separating HPE Software from HPE’s other businesses.*” [Emphasis
20 added.]

21 63. In addition to describing the reasons behind the Merger, the Company described its
22 own strengths in glowing terms. The Offering Documents stated the following regarding the
23 Company’s “successful track record of executing and integrating selected strategic acquisitions”:

- 24 • the Company’s “acquisitions, in addition to delivering shareholder value through cash
25 generation, have supplemented its organic growth strategy by broadening its
26 technology proposition and extending the addressable market and customer base
whilst also expanding the geographic reach of the business.”;
- 27 • “*[i]n each case, the Micro Focus Group’s management team has successfully*
28 *integrated the new business* into the Micro Focus Group’s then existing operations

1 and executed a program of targeted cost cutting and/or restructuring in order to
2 improve operational efficiencies and group profitability.”; and

- 3 • “[h]istorically, the Micro Focus Group believes that *it has successfully worked*
4 *through these integration challenges and has not seen a material impact on its*
5 *ability to obtain the desired integration results or improvements in operations and*
6 *profitability.*”

7 [Emphasis added.]

8 64. The Offering Documents repeatedly described the competitive and operational
9 strengths of Micro Focus evidenced by its strategic acquisitions, such as the Merger. For example,
10 the Offering Documents stated that Micro Focus had “a clear strategy and business model . . . focused
11 on the way in which we believe that mature infrastructure software businesses should be managed
12 and that the market for these businesses is going to consolidate.” The Offering Documents further
13 stated that Micro Focus “set out to be an effective company at managing a portfolio of mature
14 infrastructure software assets.” The Offering Documents trumpeted Micro Focus’s “*proven ability*
15 *to execute,*” which “not only delivers significant amounts of cash and consequently great flexibility,
16 but also *a competitive advantage in the acquisition of other similar assets.*” Further, the Company
17 used acquisitions in part to achieve its continuous and long-term core objective of “*15 to 20% per*
18 *annum*” in total shareholder returns. The Offering Documents averred that Micro Focus “executes
19 this strategy with *a strong discipline around the uses of cash and optimizes Total Shareholder*
20 *Returns* with a combination of organic execution, financial leverage and acquisitions.” Acquisitions
21 were “*only made if the Micro Focus Board believes that they will generate risk adjusted returns*
22 *greater than the base case.*” [Emphasis added.]

23 65. The Offering Documents touted the Company’s financial discipline and ability to
24 improve efficiencies of acquired assets such as HPE Software, stating that one of the Company’s “key
25 areas of operational focus to achieve [its] core objective” was “*financial discipline in mergers and*
26 *acquisitions,*” and that it had already showed “*strong financial discipline around the uses of cash,*”
27 \$2.5 billion of which was to be expended by the Company in the Merger. The Offering Documents
28 added that the Company sought to “acquire businesses in the mature infrastructure software space
and *improve the operational efficiency of those businesses* by applying the Micro Focus business

1 model.” Specifically, the Offering Documents claimed that Micro Focus used acquisitions to “**help**
2 **clients derive value from their existing and often highly complex IT investments.**” [Emphasis
3 added.]

4 66. The Offering Documents also showed a rosy picture in the Company’s North America
5 region, with annual revenues increasing by over 12.5% (or declining by only 3.1% on a constant
6 currency basis) between April 30, 2016 and April 30, 2017. In addition, the Offering Documents
7 claimed that “[w]hile the Micro Focus Product Portfolio did decline 5.7% on a pro forma constant
8 currency basis in the fiscal year ended April 30, 2017 as compared to the fiscal year ended April 30,
9 2016, it delivered performance in line with management expectations.” The Offering Documents
10 claimed further financial health and growth, in that the Company’s “[u]nderlying Adjusted EBITDA
11 increased by \$108.4 million, or 20.4%, to \$640.9 million in the fiscal year ended April 30, 2017 as
12 compared to \$532.5 million in the fiscal year ended April 30, 2016.”

13 67. The Offering Documents stressed the importance to the Company of maintaining
14 “high customer satisfaction levels in order to retain and grow its customer base.” The Offering
15 Documents highlighted the fact that Micro Focus had “**over 20,000 customers, including 91 of the**
16 **Fortune 100 companies,**” and that HPE Software had “**over 30,000 customers worldwide, including**
17 **98 of the Fortune 100 companies.**” While the Offering Documents acknowledged the material
18 importance of retaining customers and the risks that might occur to the Company’s business “if” it
19 failed to retain and grow its customer base, they failed to disclose the significant disruption to
20 customer accounts and loss of customers that had already occurred as a result of HPE Software’s
21 separation from HPE and HP. The Offering Documents further stated:

22 The Group’s ability to maintain customer satisfaction depends in part on the quality of
23 its professional service organization and technical and other support services,
24 including the quality of the support provided on its behalf by certain partners. Once
25 products are deployed within the IT environments of the Group’s customers, these
26 customers depend on the Group’s ongoing technical and other support services, as well
27 as the support of the Group’s channel partners, to resolve any issues relating to the
28 implementation and maintenance of the Group’s products. ***If the Group or its channel
partners do not effectively assist its customers in deploying its products, succeed in
helping its customers quickly resolve post-deployment issues, or provide effective
ongoing support, the Group may be unable to sell additional products to existing
customers and its reputation with potential customers could be damaged. As a
result, the failure by the Group to maintain high-quality customer support could***

1 *have a material adverse effect on the business, financial condition, results of*
2 *operation and prospects of the Group.*

3 [Emphasis added.]

4 68. The Offering Documents also emphasized that the continued success of the Company
5 relied in large part on employee retention – especially of its sales force. To that end, the Offering
6 Documents claimed that “*Micro Focus believes the Group’s success is dependent upon its ability to*
7 *attract and retain senior management as well as other key employees, such as sales management,*
8 *product management and development personnel that provide expertise and experience critical to the*
9 *implementation of the Group’s strategy.*” The Offering Documents also stated that the Company is
10 “*dependent on the success of its sales force,* and its failure to develop the skill sets of its sales
11 personnel may lead to poor sales performance.” While the Offering Documents mentioned the
12 material importance of keeping sales employees and the risks that might occur to the Company’s
13 business “if” it failed to retain key personnel and sales employees, they failed to disclose that a greater
14 number of sales employees had already been laid off, quit, or switched roles than had been disclosed
15 – and that sales and revenues were already being negatively impacted due to the resulting decrease in
16 sales capacity.

17 69. The statements in paragraphs 52-62 were materially false and misleading when made
18 because they failed to disclose:

19 (a) that HPE Software was experiencing significant disruptions in global customer
20 accounts as a result of its split from HPE and HP, which had materially impacted HPE Software’s
21 ability to retain customers and the ability of Micro Focus to recognize claimed synergies from the
22 Merger;

23 (b) that HPE Software and Micro Focus were experiencing massive employee
24 attrition, including the loss of key sales personnel, and that this loss had adversely impacted the
25 Company’s operational capabilities and revenue trends;

26 (c) that Micro Focus was suffering worsening revenue trends and was on pace to
27 significantly miss market expectations for its interim results in its core legacy business for the six
28 months ended October 31, 2017 – with revenues for the Company’s Existing Products portfolio

1 ultimately declining 7% during the period and its licensing revenues in this segment declining 17%
2 during this time – and that these worsening revenue trends were accelerating;

3 (d) that Micro Focus was experiencing significant sales execution problems in its
4 North America region;

5 (e) that Micro Focus had a poor reputation among legacy HPE Software
6 customers, certain of which suspended deals with HPE Software following the announcement of the
7 Merger;

8 (f) that Micro Focus was planning to lay off a significant number of employees in
9 the months following the Merger;

10 (g) that HPE Software did not have the operational capabilities, loyal customer
11 base, products, or key personnel to justify its purchase price or to reverse worsening revenue trends;

12 (h) that Micro Focus had otherwise failed to put in place the operations, procedures
13 and personnel necessary to integrate successfully with HPE Software, or conduct sufficient due
14 diligence, so as to provide a reasonable likelihood that the purported synergies from the Merger would
15 be realized;

16 (i) that the total enterprise value for the Merger was artificially inflated by more
17 than \$3.4 billion; and

18 (j) that, as a result of (a)-(i), the Company’s ability to service the increased debt
19 load it had incurred as a result of the Merger had been materially impaired.

20 70. Indeed, the Merger was subject to certain known but undisclosed integration problems
21 that doomed the Merger from the start. In fact, the very styles of the two companies were almost
22 antithetical to one another. Micro Focus centered on shareholder returns and cost cutting. While
23 Loosemore stressed efficiencies and stated that focusing on growth “should be done by the venture
24 capitalists and the people in their dorm rooms at Harvard,” Hsu and HPE management was, in fact,
25 devoted to growth. Hsu had said “the number one improvement in margin dollars is [from] revenue
26 growth.” Indeed, the inherently different management views of the “hard nosed Mr. Loosemore” and
27 Hsu necessarily created tensions.

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1 71. One undisclosed problem was that HPE customers frequently placed orders that
2 included “bundled” hardware and software products. Some of these customers would not have made
3 standalone software orders. After the Merger, Micro Focus lost out on software-only sales that would
4 have been consummated as part of a bundled hardware and software package with HPE. These
5 problems were exacerbated by Micro Focus taking a significant provision for impairment of trade
6 receivables in October 2017, which reflected the deterioration of the credit quality of the Company’s
7 customers.

8 72. The Offering Documents also failed to disclose that HPE had failed to fully invest in
9 its product set, leading to a significant drag on sales which lagged behind its competitors during the
10 period of underinvestment. Analysts noted that several HPE products were falling behind its
11 competitors’ products, including Service Anywhere trailing ServiceNow, ArcSight trailing Splunk
12 and other SIEM platforms, and HPE’s DevOps tools trailing Jira and other open source DevOps
13 products. This underinvestment led to existing HPE customers failing to upgrade or buy new HPE
14 products, and made it much more difficult for Micro Focus to sign up new customers to legacy HPE
15 products. Moreover, Micro Focus rebranded many of the popular name brand legacy HPE Software
16 products into Micro Focus products, which was also a factor in decreased revenues.

17 73. The Offering Documents similarly failed to disclose that HPE Software customers had
18 a negative opinion of Micro Focus and its business practices. Among HPE Software customers, Micro
19 Focus was well-known for acquiring companies with older, dying technologies and then “milking”
20 maintenance revenues from the customers. Because many of HPE Software’s legacy customers were
21 reliant on old systems, customers were worried that Micro Focus would take advantage of this reliance
22 by increasing maintenance fees and by extracting additional licensing fees. Some customers were so
23 wary of Micro Focus that they were not allowing Company personnel to even enter their properties.

24 74. Micro Focus also had a negative reputation among HPE Software customers as being
25 “compliance police,” meaning that Micro Focus had a reputation for strictly enforcing audit rights in
26 software contracts. These audit rights allow Micro Focus to go to customers and determine if any
27 licensing requirements are being violated, and, if so, the use of the software is shut down until any
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1 outstanding additional license fees are made current. Due to these negative opinions of Micro Focus,
2 some customers even suspended pending deals with HPE Software following the announcement of
3 the Merger. In an effort to salvage deals, sales teams were told to emphasize that Defendant Hsu
4 (from HPE Software) would be the CEO of the merged company.

5 75. There were also serious sales force issues facing the Company at the time of the
6 Merger, including under-investment, attrition, and mis-recording. A number of sales representatives,
7 including some of the Company's top sales performers, left the Company as their sales incentives
8 drastically changed from incentivizing obtaining new business to incentivizing recurring revenue and
9 upselling. The Company saw an estimated 30% attrition rate while the entire "Western region" sales
10 force left. Following the Merger, Micro Focus also began to lay off a significant portion of its work
11 force. In order to avoid negative investor and market scrutiny, Micro Focus conducted its layoffs in
12 waves, so as to avoid triggering notice thresholds under the California Worker Adjustment and
13 Retraining Notification Act ("WARN Act"). A review of WARN Act notices filed in California
14 demonstrates that, since the Merger, Micro Focus did not file any such notices from June 2017
15 through May 2018.

16 76. Micro Focus's sales troubles were also magnified by significant issues with its back-
17 office systems. These systems were defective in that they would produce quotes with errors or would
18 otherwise not produce purchase orders in a timely manner. When these purchase orders were not
19 timely produced, Micro Focus's customers were thus not timely invoiced. As revenue could not be
20 recognized until a customer was invoiced, these delays impacted the timing of Micro Focus's revenue
21 recognition.

22 77. Additionally, far from experiencing "full integration" by November 2017 as was
23 represented, software products remained segregated after the Merger. Thus, rather than realizing the
24 synergies of the Merger and allowing sales people to sell both HPE legacy and Micro Focus legacy
25 products, legacy HPE sales teams did not have the ability to sell Micro Focus software products.

26 78. In the fourth quarter of 2017, HPE salespersons offered steep discounts in an effort to
27 artificially accelerate demand for their products into that fiscal quarter which would normally have
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1 held until 2018. This push, while leading to an increase in revenue, also led to a significant increase
2 in accounts receivable for fiscal year 2017. In addition, this occurred at a time when Micro Focus
3 was already taking a large impairment of trade receivables in October 2017, to reflect “aging of
4 accounts receivable balances,” indicating that the credit quality of its customers was already
5 weakening. Adding further accounts receivable undermined an already weak environment for the
6 Company.

7 79. Pursuant to Item 303 of SEC Regulation S-K, 17 C.F.R. §229.303, and the SEC’s
8 related interpretive releases thereto, including any known trends, issuers are required to disclose
9 events or uncertainties that have caused, or are reasonably likely to cause, the registrant’s financial
10 information not to be indicative of future operating results. Similarly, Item 503 of SEC Regulation
11 S-K, 17 C.F.R. §229.503, requires, in the “Risk Factor” section of registration statements and
12 prospectuses, “a discussion of the most significant factors that make the offering speculative or risky”
13 and requires each risk factor to “adequately describe[] the risk.” The failure of the Offering
14 Documents to disclose the facts listed in paragraph 45 violated 17 C.F.R. §229.303(a)(3)(ii), because
15 these undisclosed facts would (and did) have an unfavorable impact on the Company’s sales, revenues
16 and income from continuing operations. This failure also violated 17 C.F.R. §229.503 because these
17 specific risks were not adequately disclosed, or disclosed at all, even though they were some of the
18 most significant factors that made an investment in Micro Focus ADSs speculative or risky.

19 **F. THE DISCLOSURE OF THE TRUTH, AND THE RESULTING FALLOUT**

20 80. The Merger was completed on September 1, 2017. As a result, Micro Focus issued
21 ADSs representing more than 222 million consideration shares to HPE shareholders. The ADSs
22 issued in the Merger closed at \$28.81 per ADS on their initial trading day, representing over \$6.4
23 billion in total market value.

24 81. On September 6, 2017, Micro Focus filed its third quarter financial results and an
25 update for the period ending October 31, 2017 for HPE Software on Form 6-K. The Form 6-K stated
26 that HPE Software generated revenues of \$718 million for the quarter ended July 31, 2017, which
27 represented a 3% revenue decline compared to the same period in 2016. The Form 6-K also provided
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1 guidance for HPE Software for the year ended October 31, 2017 in the range of \$2.89 billion to \$2.96
2 billion “driven by the active reduction of less profitable professional services in sub-scale service
3 lines and geographies together with lower licence revenue offset by increasing SaaS revenue and
4 support revenue being broadly flat.” This guidance range implied fourth quarter 2017 revenues down
5 13% at the mid-point.

6 82. Despite these poor results, Defendants continued to tout the benefits of the Merger,
7 with Defendant Hsu stating on September 7, 2017 Capital Markets Day that “We’re committed to
8 delivering the value that we said at the beginning, and our operating model preserve capital and
9 maintains shareholder value for the long term in a sustained model.” Defendant Murdoch likewise
10 stated that “With the assets that we have in terms of people, technology, capabilities, the vision that
11 we have for the company and the track record we have of delivering complex integrations, I’m really,
12 really, really confident about the future[.]”

13 83. On January 8, 2018, Micro Focus provided its financial and operating results for the
14 six months ended October 31, 2017 on Form 6-K (the “January Interim Update”). The Company
15 reported revenue of only \$1.235 billion for the period and an adjusted EBITDA of only \$530 million.
16 HPE Software revenue for the year ended October 31, 2017 came in at the very bottom of the prior
17 reported guidance at \$2.891 billion, and \$34 million below the mid-point. In addition, the Company
18 stated that it had suffered sales execution issues in its North America region stemming from the loss
19 of key sales personnel. Revenue for Micro Focus’s legacy businesses came in 2.7% lower and
20 adjusted EBITDA came in 4.1% lower for the period, as Micro Focus stated it had “put operational
21 improvement plans on hold while working on the completion of the HPE Software transaction.” In
22 addition, Micro Focus reported revenues of only \$500.3 million for the six months ended October 31,
23 2017 in its Existing Products segment, reflecting a 7% year-over-year decline. The Company’s
24 licensing services in its Existing Products segment declined 17% and its consultancy services in the
25 segment declined 11.7% during this same time. The Company also revealed that Defendant Phillips
26 would change positions from CFO to the Company’s Director of M&A.

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1 84. Once again, despite the poor results, Defendant Hsu continued to state that the lofty
2 goals of the Merger were still achievable, telling investors on a January 8, 2018 conference call that
3 “the strategy of Micro Focus has not changed, will not change, and we remain focused on delivering
4 15% to 20% shareholder returns” and that “we’ll find a way to delivery if the revenue doesn’t
5 materialize.” In a same day slide show presentation by Defendants Hsu and Phillips, Defendants
6 continued to represent that the Merger would achieve its goals, stating that the “Combined company
7 is a strong platform with a proven operating model for managing a portfolio of scale assets and is
8 well-positioned to benefit from consolidation” and that Micro Focus was “[c]ommitted to delivering
9 the value creation that we outlined at the outset of the announcement of this transaction.”

10 85. Micro Focus’s Form 20-F, filed on January 26, 2018, noted that, with respect to SUSE
11 in particular, Micro Focus “made changes to the sales leadership in North America in the June to
12 September time frame and are rebuilding the sales team there. This contributed to the lower than
13 expected revenue growth in North American in the period.”

14 86. Then, on March 19, 2018, Micro Focus filed a trading update on Form 6-K where it
15 could no longer downplay the disastrous situation. The trading update stated that the Company’s
16 revenue declines had significantly accelerated. Specifically, Micro Focus lowered its constant
17 currency revenue guidance for the 12 months ended October 31, 2018 from minus 6% to minus 9%
18 compared to the prior year, more than doubling the rate of revenue decline listed in the January
19 Interim Update. Near-term guidance was even worse, with revenue growth guidance for the first half
20 of 2018 set at minus 9% to minus 12%. The trading update also ascribed the worsening revenue
21 trends to disruption of former HP global customer accounts as a result of the split of HP and HPE –
22 which had taken place nearly two and half years previously, in November 2015 – and to ongoing sales
23 execution issues, particularly in North America, as well as to significant employee attrition. The
24 trading update further disclosed that Defendant Hsu had abruptly resigned from the Company, after
25 only six-and-a-half months as CEO.

26 87. Micro Focus CFO Christopher John Kennedy noted on a conference call with investors
27 on March 19, 2018, that “the rate of year-on-year decline has been greater than anticipated . . . minus
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1 6% to minus 9%.” Defendant Murdoch likewise acknowledged that certain areas of the business
2 needed immediate attention, including “top global accounts,” “field selling capacity,” and “sales
3 management team.” Defendant Murdoch also finally admitted that the merged company was
4 experiencing “integration challenges,” stating that “the impact of the disaggregation from HPE and
5 its well-established co-management structure was frankly underestimated.” CFO Kennedy similarly
6 noted that “it’s an integration and execution issue.”

7 88. Importantly, analysts pointed out, and Defendants acknowledged, that the industry in
8 general was doing quite well and that the concerns were “more of [the Company’s] making that of
9 the market making.”

10 89. In response to an analyst query regarding the causes of the negative revenue trends,
11 CFO Kennedy pointed to “the integration, the system implementation, the HPE disruption, and the
12 sales execution in North America.” As to sales problems, Defendant Loosemore added that “you
13 would expect general attrition normally to be at the 15% to 20% range. We’ve got pockets where it’s
14 been higher than that by up to 10 points and we’re seeking to address those. We are looking to hire
15 between now and the end of the year a net new 40 to 50 salespeople in the business.”

16 90. Also on March 19, analysts with Deutsche Bank suggested that the sales execution
17 issues were due in part to the poor reputation of Micro Focus among HPE Software customers, noting
18 that HPE had a reputation for treating customers well, while Micro Focus had a reputation for license
19 audits and increasing maintenance fees. Analysts from JP Morgan also noted that the “HPE Software
20 deal is clearly below expectations” while on March 20, Credit Suisse analysts called March 19 results
21 a “reality shock.” The results and the Merger in general exposed the shaky cost-cutting strategy of
22 Micro Focus and “derailed” the investment thesis behind it.

23 91. On March 22, 2018, the price of Micro Focus ADSs closed at \$12.99 per ADS, more
24 than 54% lower than the closing price of the ADSs on the date of the Merger’s close. The price has
25 continued to trade well below the Merger price since the disclosures described above.

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1 **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

2 92. Plaintiffs bring this action as a class action on behalf of themselves and on behalf of a
3 class consisting of all those who purchased or acquired the Company's ADSs pursuant to the
4 Company's Merger and Offering Documents and who were damaged thereby (the "Class"). Excluded
5 from the Class are Defendants, the officers and directors of Micro Focus, and the officers and directors
6 of HPE at all relevant times; members of their immediate families and their legal representatives,
7 heirs, successors, or assigns; and any entity in which they have or had a controlling interest.

8 93. The members of the Class are so numerous that joinder of all members is
9 impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and
10 can only be ascertained through appropriate discovery, Plaintiffs believe that there are thousands of
11 members of the proposed Class. The members of the proposed Class may be identified from records
12 maintained by Micro Focus or its transfer agents and may be notified of the pendency of this action
13 by mail, using customary forms of notice that are commonly used in securities class actions.

14 94. Plaintiffs' claims are typical of the claims of the members of the Class, as all members
15 of the Class are similarly affected by Defendants' wrongful conduct.

16 95. Plaintiffs will fairly and adequately protect the interests of the members of the Class
17 and has retained counsel competent and experienced in class and securities litigation.

18 96. Common questions of law and fact exist as to all members of the Class and
19 predominate over any questions solely affecting individual members of the Class. Among the
20 questions of law and fact common to the Class are:

21 (a) whether the federal securities laws were violated by Defendants' acts as
22 alleged herein;

23 (b) whether the Offering Documents contained materially false and misleading
24 statements and omissions; and

25 (c) to what extent Plaintiffs and members of the Class have sustained damages and
26 the proper measure of damages.

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1 Offering Documents as about to become directors. Accordingly, each Individual Defendant is strictly
2 liable for the materially inaccurate statements contained in the Offering Documents and the failure of
3 the Offering Documents to be complete and accurate, unless they are able to carry their burden of
4 establishing an affirmative “due diligence” defense. The Individual Defendants each had a duty to
5 make a reasonable and diligent investigation of the truthfulness and accuracy of the statements
6 contained in the Offering Documents, and to ensure that they were true and accurate, that there were
7 no omissions of material facts that would make the Offering Documents misleading, and that the
8 document contained all facts required to be stated therein. In the exercise of reasonable care, the
9 Individual Defendants should have known of the material misstatements and omissions contained in
10 the Offering Documents and also should have known of the omissions of material facts necessary to
11 make the statements made therein not misleading. Accordingly, the Individual Defendants are liable
12 to Plaintiffs and the Class.

13 103. By reasons of the conduct herein alleged, each Defendant violated §11 of the Securities
14 Act.

15 104. Plaintiffs acquired Micro Focus ADSs pursuant and/or traceable to the Offering
16 Documents, and without knowledge of the untruths and/or omissions alleged herein. Plaintiffs
17 sustained damages, and the price of Micro Focus ADSs declined substantially due to material
18 misstatements in the Offering Documents.

19 105. This claim was brought within one year after the discovery of the untrue statements
20 and omissions and within three years of the date of the Merger.

21 106. By virtue of the foregoing, Plaintiffs and the other members of the Class are entitled
22 to damages under §11 as measured by the provisions of §11(e), from the Defendants and each of
23 them, jointly and severally.

24 **SECOND CAUSE OF ACTION**

25 **Violations of §12(a)(2) of the Securities Act**
26 **Against Micro Focus**

27 107. Plaintiffs repeat and reallege each and every allegation contained above as if fully set
28 forth herein.

1 114. The Individual Defendants referenced above were controlling persons of Micro Focus
2 within the meaning of §15 of the Securities Act. By reason of their ownership interest in, senior
3 management positions at, and/or directorships held at the Company, as alleged above, these
4 Defendants individually and collectively, had the power to influence, and exercised the same, over
5 Micro Focus, to cause the Company to engage in the conduct complained of herein.

6 115. By reason of such wrongful conduct, the Individual Defendants referenced above are
7 liable pursuant to §15 of the Securities Act. As a direct and proximate result of the wrongful conduct,
8 Class members suffered damages in connection with their purchases or acquisitions of Micro Focus
9 ADSs.

10 **FOURTH CAUSE OF ACTION**

11 **Violations of §15 of the Securities Act**
12 **Against Defendant HPE**

13 116. Plaintiffs repeat and reallege each and every allegation contained above as if fully set
14 forth herein.

15 117. HPE was a controlling person within the meaning of §15 of the Securities Act with
16 respect to the Merger through its prior ownership of HPE Software, its mutual agreement and joint
17 action with Micro Focus to conduct the Merger, and through the appointment of Defendants Hsu and
18 Schultz to the Micro Focus Board of Directors. By reason of its ownership interest in HPE Software,
19 the directorship held at the Company by its direct employee as alleged above, HPE had the power to
20 influence, and exercised the same, over the Merger, to cause the conduct complained of herein. And
21 because Defendants Schultz and Hsu were employees of HPE and acted according to HPE directives
22 prior to the consummation of the Merger, HPE controlled Defendants Schultz and Hsu and is
23 responsible under §15 for their alleged violations of the securities laws.

24 118. By reason of such wrongful conduct, HPE is liable pursuant to §15 of the Securities
25 Act. As a direct and proximate result of the wrongful conduct, Class members suffered damages in
26 connection with their purchases or acquisitions of Micro Focus ADSs.

27 **REQUEST FOR RELIEF**

28 WHEREFORE, Plaintiffs pray for judgment as follows:

1 A. Declaring this action to be a proper class action and certifying Plaintiffs as Class
2 representatives;

3 B. Awarding Plaintiffs and the other members of the Class compensatory damages;

4 C. Awarding Plaintiffs and the other members of the Class rescission on their §12(a)(2)
5 claim;

6 D. Awarding Plaintiffs and the other members of the Class pre-judgment and post-
7 judgment interest, as well as reasonable attorneys' fees, expert witness fees, and other costs and
8 disbursements; and

9 E. Awarding Plaintiffs and the other members of the Class such other and further relief
10 as the Court may deem just and proper.

11 **JURY TRIAL DEMANDED**

12 Plaintiffs hereby demand a trial by jury.

13 DATED: September 30, 2021

ROBBINS GELLER RUDMAN
& DOWD LLP
JAMES I. JACONETTE

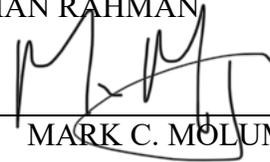
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[Proposed] Class Counsel for Plaintiffs

1 **PROOF OF SERVICE**

2 I, Caroline Barrett, am employed in the County of San Diego, State of California. I am over
3 the age of 18 and not a party to the within action; my business address is Robbins Geller Rudman &
4 Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101. My electronic service address
5 is cbarrett@rgrdlaw.com.

6 On September 30 2021, I served a true and correct copy of the foregoing document, on the
7 interested parties in this action, as follows:

8 X **By Electronic Filing**

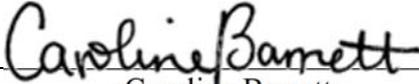
9 I caused said document(s) to be filed electronically using Odyssey File & Serve, an
10 electronic filing service provider of the Superior Court of San Mateo County; and

11 X **By Electronic Mail**

12 I caused said document(s) to be transmitted by electronic mail. The name(s) and email
13 address(es) of the person(s) served are set forth in the attached Service List. The
14 document was transmitted by electronic transmission and without error.

15
16 I declare under penalty of perjury of the laws of the state of California that the foregoing is
17 true and correct.

18 Executed on this 30th day of September, 2021, at San Diego, California.

19 
20 _____
Caroline Barrett

SERVICE LIST

| Party | Counsel |
|--|---|
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