

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

TOWN OF DAVIE POLICE PENSION PLAN,  
on behalf of itself and all others similarly  
situated,

Plaintiff,

v.

COMMVAULT SYSTEMS, INC., N. ROBERT  
HAMMER, and BRIAN CAROLAN,

Defendants.

Civ. A. No.

**COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS**

JURY TRIAL DEMANDED

Plaintiff Town of Davie Police Pension Plan (“Plaintiff”), by and through its counsel, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, *inter alia*, counsel’s investigation, which includes review and analysis of: (a) regulatory filings made by CommVault Systems, Inc. (“CommVault” or the “Company”) with the United States Securities and Exchange Commission (“SEC”); (b) press releases and media reports issued by and disseminated by the Company; (c) analyst reports concerning CommVault; (d) government regulatory reports regarding the Company; and (e) other public information regarding the Company.

**INTRODUCTION**

1. This class action is brought on behalf of purchasers of CommVault’s publicly traded common stock between May 15, 2013 and April 24, 2014, inclusive (the “Class Period”). The claims asserted herein are alleged against CommVault and certain of the Company’s senior executives (collectively, “Defendants”), and arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

2. Headquartered in Oceanport, New Jersey, CommVault is an independent provider of data and information management software, which is sold under the Simpana brand name. CommVault derives about half of its annual revenue from licensing its software applications, with the remaining half of the Company's revenue coming in the form of services and maintenance revenue.

3. Like most software companies, CommVault maintains a sizable amount of deferred revenue on its balance sheet, which is primarily comprised of advanced payments of license fees and annual maintenance charges. Indeed, nearly all of CommVault's deferred revenue is comprised of prepaid service and maintenance revenue, with software licensing typically making up less than one percent of total deferred revenue. Accounting rules require the Company consider these unearned revenues as liabilities until the revenues are earned, at which time they are recognized as revenue in the Company's income statement.

4. Since its initial public offering ("IPO") in 2006, the Company has experienced rapid growth and, as a high-growth company, CommVault's continued growth is of critical importance to investors. To drive software sales growth, in the beginning of 2013, the Company committed to making significant investments in customer training, market awareness, and expanded distribution. CommVault also announced its plans to bolster its sales force in order to drive future growth.

5. By May 2013, however, the Company had already begun experiencing decelerating software revenue growth and CommVault's investments in its sales force were insufficient to offset employee attrition and drive the level of growth that the Company had assured investors it could achieve. To conceal that deceleration from investors, during the Class Period, Defendants misrepresented CommVault's revenue growth by booking and subsequently

recognizing deferred software licensing revenue to mask slowing revenue growth, while at the same time denying that revenue growth was in fact decelerating. The Company also misrepresented that it was increasing investments in its sales force and hiring more sales employees in order to continue to drive growth through fiscal year 2014 and beyond. As a result of these misrepresentations, CommVault stock traded at artificially inflated prices during the Class Period.

6. The truth began to be revealed on January 29, 2014, when the Company disclosed that it had only met its revenue growth target because of the timely recognition of deferred software licensing revenue, effectively depleting CommVault's deferred software licensing revenue. The Company also disclosed that it had missed its sales force hiring target for the quarter. Following these disclosures, the price of CommVault stock fell from \$76.10 per share to \$69.44, or nearly 9%.

7. These disclosures provided investors with the first indication that CommVault's revenue growth was decelerating and that the investments in the Company's sales force were insufficient to counteract employee attrition and drive future revenue growth. Despite investors' concern over what they feared was decelerating revenue growth, the Company insisted that shrinking deferred software licensing revenues were not an indicator of the Company's growth.

8. Then, on April 25, 2014, the Company shocked investors by announcing that its fiscal fourth quarter profit dropped 7.8% as a result of significant deceleration in revenue growth. Without the ability to use deferred software licensing revenue, the Company could no longer conceal the deceleration in revenue growth that it had been experiencing. The Company also revealed that its financial results were negatively impacted, in large part, by inadequate staffing of sales and marketing personnel. While the Company had assured investors throughout the

Class Period that it would increase its investment in sales and marketing staff, CommVault disclosed that its sales and marketing expenses as a percentage of total revenues had actually decreased by about 12% from the prior year.

9. These disclosures caused the price of CommVault stock to plummet, falling over 30% from \$68.58 per share to \$47.56. The decline in the price of CommVault stock caused by these disclosures of the truth about the Company damaged Plaintiff and the Class.

### **JURISDICTION AND VENUE**

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

11. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). CommVault maintains its executive offices in this District and many of the acts and conduct that constitute the violations of law complained of herein, including dissemination to the public of materially false and misleading information, occurred in and/or were issued from this District. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

### **PARTIES**

12. Plaintiff Town of Davie Police Pension Plan is a pension fund based in Davie, Florida that provides retirement benefits for retired police officers of the Town of Davie. As of March 2014, Plaintiff managed assets in excess of \$119 million on behalf of hundreds of active

members, retirees, and beneficiaries. Plaintiff purchased shares of CommVault stock on the NASDAQ Stock Market during the Class Period and suffered damages as a result of the violations of the federal securities laws alleged herein.

13. Defendant CommVault, a Delaware Corporation based in New Jersey, develops, markets, and sells data and information management software applications. CommVault maintains its principal executive offices at 2 Crescent Place, Oceanport, New Jersey. The Company's common stock trades on the NASDAQ Stock Market, which is an efficient market, under ticker symbol "CVLT." CommVault currently has approximately 45.2 million shares of stock outstanding.

14. Defendant N. Robert Hammer ("Hammer") was, at all relevant times during the Class Period, CommVault's Chairman, President, and Chief Executive Officer ("CEO").

15. Defendant Brian Carolan ("Carolan") was, at all relevant times during the Class Period, CommVault's Chief Financial Officer ("CFO").

16. Defendants Hammer and Carolan are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with CommVault, possessed the power and authority to control the contents of CommVault's reports to the SEC, press releases, and presentations to securities analysts, money and portfolio managers, and institutional investors. Each of the Individual Defendants was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of the Individual Defendants knew that the adverse facts specified herein

had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

### **BACKGROUND**

17. Originally formed as a development group within Bell Labs, in 1996 CommVault was incorporated as an independent provider of data and information management software.

18. CommVault develops, markets, and sells data and information management software applications under the Simpana Software brand. The Simpana platform provides a full complement of data and information management services, including backup and recovery, archive, replication, eDiscovery, and virtual and cloud environments. The Company provides its software applications and related services to large global enterprises, small and medium sized businesses, and government agencies.

19. CommVault derives about half of its annual revenue from licensing its software applications. The Company sells its software to end-users both directly, through an in-house sales force, and indirectly, through a global network of reseller partners and original equipment manufacturers. The remaining half of the Company's revenue comes in the form of services and maintenance revenue. CommVault's services and maintenance revenue is made up of fees from the delivery of customer support and other professional services, which are typically bundled with the Company's software applications.

20. The Company has a worldwide, multi-channel distribution network to sell its software and services to CommVault customers, both directly through an in-house sales force and indirectly through a global network of value-added reseller partners, systems integrators, corporate resellers and original equipment manufacturers.

21. Like many software companies, CommVault maintains a sizable amount of deferred revenue on its balance sheet. Such deferred revenue may include advance payments of license fees and annual maintenance charges. Prior to the start of the Class Period, nearly all of CommVault's deferred revenue had been comprised of prepaid service and maintenance revenue, with software licensing typically making up less than one percent of total deferred revenue. For example, from the beginning of fiscal year 2011 through the third quarter of fiscal year 2013 the Company's deferred revenue from software licensing and sales fluctuated from about \$200,000 to \$3.8 million, while the Company's deferred revenues from maintenance and servicing grew from about \$115 million to over \$158 million.<sup>1</sup> Accounting rules require the Company to book these unearned revenues as liabilities until the revenues are earned, at which time they are recognized as revenue in the Company's income statement.

22. Since its IPO in 2006, CommVault has experienced rapid growth, averaging over 38% revenue growth per year from fiscal year 2007 through fiscal year 2013. As a high-growth company, CommVault's ability to continue to grow its revenues at a consistent rate was of critical importance to investors. To continue to drive its software sales growth, in the beginning of 2013, the Company represented that it was making significant investments in customer training, market awareness, and expanded distribution. CommVault also announced plans to increase the size of its sales force in order to drive future growth. Based in part on that expanded staffing and training, the Company told investors to expect total annual revenue to increase from about \$500 million in fiscal 2013 to over \$1 billion "over the next few years." According to analysts, the Company's revenue would have to grow by at least 20% year-over-year to reach \$1 billion by fiscal 2017.

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<sup>1</sup> The Company bases its fiscal year, which ends on March 31, on the calendar year in which the fiscal period ends. For example, the 12-month period ending March 31, 2013 is considered "fiscal year 2013."

23. By May 2013, however, the Company had already begun experiencing decelerating revenue growth from software licensing, and rather than increasing the sales force, CommVault's investments in its sales force were insufficient to offset employee attrition and drive the level of growth that CommVault had assured investors it could achieve.

**DEFENDANTS' MATERIALLY FALSE AND MISLEADING  
STATEMENTS CAUSE SUBSTANTIAL LOSSES TO INVESTORS**

24. On May 14, 2013, after the market closed, the Company filed its annual report on Form 10-K for the fiscal year ended March 31, 2013. In the annual report, the Company announced that its deferred revenue from software licensing had leapt from \$3.1 million to \$9.2 million, the highest level since CommVault's IPO. The Company provided no explanation regarding the nature of the software sales from which this revenue arose.

25. In the annual report, CommVault also warned that:

[I]n the past, we have experienced higher levels of turnover in our sales force compared to other employee groups in our company. Increases in the turnover rate of our sales force may affect our ability to generate license revenue growth.

\* \* \*

If we are unable to hire or retain qualified employees across our organization, or conversely, if we fail to manage employee performance or reduce staffing levels when required by market conditions, our personnel costs would be excessive and our business and profitability could be adversely affected.

The Company omitted, however, that such risks had already materialized.

26. The statements and omissions set forth in ¶25 were materially false and misleading. While CommVault represented that turnover in its sales force and its inability to hire or retain qualified employees could impact the Company's business, CommVault concealed that those risks had already materialized because the Company was already facing high

employee attrition and its investments in its sales force were insufficient to drive the level of growth that CommVault had assured investors it could achieve.

27. On June 12, 2013, CFO Carolan represented the Company at the William Blair Growth Stock Conference. During the conference, Carolan assured investors that CommVault would continue to experience “strong double-digit revenue and EBITDA growth” and that the Company “continue[d] to see accelerating revenue growth from enterprise software transactions.”

28. The statements set forth above in ¶27 were materially false and misleading because Defendants knew or should have known that CommVault had begun experiencing decelerating revenue growth from its principal software products. In addition, the Company was faced with high levels of turnover among its sales staff and CommVault’s investments in its sales force were insufficient to offset employee attrition and drive the level of growth that CommVault had assured investors it could achieve.

29. On July 30, 2013, the Company held its earnings conference call for the first quarter of fiscal year 2014. During the call, CEO Hammer and CFO Carolan continued to assure investors that the Company would continue to experience strong revenue growth during fiscal year 2014. Specifically, Defendant Carolan stated that “we remain confident in our ability to continue to achieve solid double-digit revenue growth during FY 2014.” Defendant Hammer added that the Company was “well positioned once again to achieve well above industry average revenue and earnings growth rate.”

30. Also during the conference call, CFO Carolan stated that although the Company did not meet its internal hiring targets for the quarter, the Company added 57 net employees. In addition, Carolan assured investors that the Company expected to increase its rate of investment

during the remainder of the fiscal year “with a heavy focus on the recruitment of sales and front end technical support teams.”

31. The statements set forth above in ¶¶29-30 were materially false and misleading because Defendants knew or should have known that CommVault had begun experiencing decelerating revenue growth from its principal software products. In addition, the Company was faced with high levels of turnover among its sales staff and CommVault’s investments in its sales force were insufficient to offset employee attrition and drive the level of growth that CommVault had assured investors it could achieve.

32. Several months later, on October 29, 2013, the Company issued a press release announcing its financial results for its fiscal second quarter ended September 30, 2013. In the press release, which was also filed with the SEC on Form 8-K, the Company reported quarterly year-over-year revenue growth of about 20%, which exceeded analysts’ expectations. However, CommVault’s quarterly financial results were supported, in no small part, by the recognition of about \$4.5 million of the roughly \$9.2 million of deferred revenue from software sales that the Company had deferred at the start of the fiscal year. Notably, the Company exceeded analysts’ overall revenue expectations by just \$2 million, meaning that if CommVault had not recognized millions of dollars of deferred software licensing revenue, the Company would have missed its revenue estimates for the quarter. Even after the recognition of \$4.5 million of deferred software licensing revenue, CommVault’s deferred revenue from software sales remained historically high at about \$4.7 million.

33. Later that same day, the Company held a conference call with analysts and investors to discuss the Company’s earnings and operations. During the conference call, analysts questioned whether the fact that the Company’s revenue was supported by the recognition of

deferred software licensing revenue indicated that revenue growth was slowing. CFO Carolan rebuffed those questions, stating that investors should not “read into the quarterly swings” in deferred revenue, and assured investors that revenue would continue to grow at historically high levels. In addition, CEO Hammer urged investors not to concern themselves with decelerating revenue growth and assured investors that the Company’s “visibility” and “business momentum” had “clearly increased.”

34. The statements set forth above in ¶¶32-33 were materially false and misleading because Defendants knew or should have known that CommVault had begun experiencing decelerating revenue growth from its principal software products. In addition, the Company was faced with high levels of turnover among its sales staff and CommVault’s investments in its sales force were insufficient to offset employee attrition and drive the level of growth that CommVault had assured investors it could achieve.

35. Analysts were reassured by Defendant Hammer’s insistence that revenue growth was not slowing. For example, analysts at Lake Street Capital Markets reported that although “it makes sense for growth investors to pay attention to [deferred revenue],” they were comfortable with the Company’s anticipated growth based on Hammer’s representations that visibility was improving. Similarly, analysts at Piper Jaffray commented that although software revenue faced “deceleration from the prior quarter . . . deferred revenue does NOT equal visibility and we would remind investors that management specifically stated that visibility is improving.”

**CommVault Partially Discloses The Truth About Decelerating Revenue Growth**

36. On January 29, 2014, the Company disclosed that it had, once again, recognized a significant portion of deferred software licensing revenue, which allowed CommVault to achieve expected revenue growth of 20%. Specifically, during the quarter, CommVault recognized about \$4.1 million in deferred revenue from software licensing, leaving the Company with a mere

\$600,000 in deferred software licensing revenue. Notably, without the recognition of deferred software licensing revenue, CommVault's quarterly revenue growth would have been about 14%. The Company also disclosed that it had, again, missed its internal hiring target for the quarter.

37. Following these disclosures, the price of CommVault stock fell from \$76.10 per share to \$69.44, or nearly 9%. These disclosures provided investors with the first indication that the Company's revenue growth was decelerating and that the investments in the Company's sales force were insufficient to offset employee attrition and drive the level of growth that CommVault had assured investors it could achieve.

38. Despite investors' concern over what seemed like decelerating revenue growth, the Company insisted that shrinking deferred software licensing revenues were not an indicator of the Company's growth. For example, during the January 29, 2014, conference call, analysts expressed concern that, contrary to the Company's assertions, software revenue growth was slowing. In particular, one analyst from William Blair observed that CommVault "had a couple of quarters now" in which the Company was able to recognize deferred software licensing revenue, which has "allowed [CommVault] to grow very nicely." In response, CEO Hammer ardently rejected the idea that the Company's software revenue growth was being supported by the recognition of deferred revenue and retorted, "That is not true." Defendant Hammer, in an effort to quell investor concerns regarding the impact of deferred revenue recognition, later told analysts that they were "all twisted on up on deferred" and that they were "overstating the impact of deferred to what's driving the growth of this Company."

39. Defendant Hammer also assured investors that the Company's "visibility" remained strong and that investors should be focused on CommVault's strong visibility and not on its diminished deferred software licensing revenue. In particular, Hammer stated:

Let me clarify something . . . when I say visibility is up, you don't see it, but I'm just telling you, on our license revenue and growth, when you take all of that into consideration, is strong. We've just got to keep it that way. Don't get overly focused on deferred because you're going to get twisted up in your underwear.

40. The Company also assured investors that although CommVault did not meet its hiring targets for the quarter, the Company "expect[ed] to increase our rate of hiring in Q4 compared to Q3, with a heavy focus on the recruitment of sales and front end technical support teams." In this regard, CEO Hammer also represented that the Company would increase CommVault's rate of spending in order "to ensure we can continue to outpace the market in growth and profitability over the medium to long-term." Hammer also reiterated that the consensus growth rate of 15% for fiscal fourth quarter revenue was "reasonable."

41. The statements set forth above in ¶¶38-40 were materially false and misleading because Defendants knew or should have known that CommVault had begun experiencing decelerating revenue growth from its principal software products. In addition, the Company was faced with high levels of turnover among its sales staff and CommVault's investments in its sales force were insufficient to offset employee attrition and drive the level of growth that CommVault had assured investors it could achieve.

42. Had CommVault revealed the full truth regarding its decelerating revenue growth and sales force attrition, the price of the Company's stock would have declined much further.

43. Following the conference call, analysts at William Blair issued a report that commented on "investor fears about software revenue deceleration" and the impact of deferred revenue recognition on the Company's quarterly revenue and earnings. Specifically, the report

stated that “similar to last quarter” an “additional \$4.1 million decline in deferred license revenue in the third quarter” boosted “the software revenue line again.” According to the William Blair analysts, “[e]xcluding the impact of changes in deferred license revenue, software revenue growth was 14% in the third quarter,” down sharply from the 25% software revenue growth delivered in fiscal 2013. The William Blair analysts noted that, because the Company had effectively depleted its deferred software licensing revenue, “the March-quarter software revenue will be a tell-tale metric to either dispel or validate fears of deceleration.”

44. A few weeks later, on February 11, 2014, the Company presented at an investor conference during which CFO Carolan again assured investors that demand for the Company’s software continued to increase. Specifically, Carolan stated that “things were accelerating, not decelerating in relative terms.”

45. The statement set forth above in ¶44 was materially false and misleading because Defendants knew or should have known that CommVault had begun experiencing decelerating revenue growth from its principal software products. In addition, the Company was faced with high levels of turnover among its sales staff and CommVault’s investments in its sales force were insufficient to offset employee attrition and drive the level of growth that CommVault had assured investors it could achieve.

46. Between February 19, 2014 and March 21, 2014, CEO Hammer sold 268,506 shares of his personally-held CommVault stock, receiving proceeds of about \$18.7 million.

#### **CommVault Discloses The Truth About Decelerating Revenue Growth**

47. On April 25, 2014, the Company shocked investors by announcing that its fiscal fourth quarter profit dropped 7.8% due to significant deceleration in revenue growth. Notably, software revenue growth decelerated to just 9.6% year-over-year, less than half of the 20%

growth investors were led to expect. Despite the Company's insistence that deferred revenue was a meaningless indicator of growth, without the ability to recognize more deferred software licensing revenue, the Company could no longer conceal the revenue growth deceleration it had been experiencing. The Company also revealed that its financial results were negatively impacted, in large part, by insufficient staffing of sales and marketing personnel. While the Company had represented throughout the Class Period that it was increasing its investment in its sales and marketing staff, CommVault revealed that its sales and marketing expenses as a percentage of total revenues had actually decreased to 44% in the current quarter, which was down from about 50% in fiscal year 2013.

48. These disclosures caused the price of CommVault stock to plummet, falling from \$68.58 per share to \$47.56, or over 30%, and wiping out nearly \$1 billion of market value. Indeed, the disclosures of the truth about the Company caused the price of CommVault stock to decline precipitously, damaging Plaintiff and the Class.

49. Following this disclosure, several analysts downgraded or drastically lowered their target price for CommVault stock. For instance, analysts at Jefferies Group, which lowered their price target on CommVault stock by almost 20%, anticipated that based on the Company's disclosures, investors should now expect software revenue deceleration throughout fiscal year 2015.

50. In addition, analysts at Summit Research considered the Company's slowing revenue growth to be "largely self-inflicted" and the result of "underinvestment" in the recruitment of sales and marketing personnel throughout fiscal year 2014.

### **LOSS CAUSATION**

51. During the Class Period, as detailed herein, Defendants made materially false and misleading statements and omissions, and engaged in a scheme to deceive the market. This artificially inflated the price of CommVault common stock and operated as a fraud or deceit on the Class. Later, when Defendants' prior misrepresentations and fraudulent conduct were disclosed to the market on January 29, 2014 and April 25, 2014, the price of CommVault common stock fell precipitously, as the prior artificial inflation came out of the price over time. As a result of their purchases of CommVault common stock during the Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **CLASS ACTION ALLEGATIONS**

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

53. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. CommVault has approximately 45.2 million shares of common stock outstanding, owned by hundreds or thousands of investors.

54. There is a well-defined community of interests in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether Defendants violated the Exchange Act;

- (b) Whether Defendants omitted and/or misrepresented material facts;
- (c) Whether Defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether Defendants knew or recklessly disregarded that their statements and/or omissions were false and misleading;
- (e) Whether the price of CommVault common stock was artificially inflated;
- (f) Whether Defendants' conduct caused the members of the Class to sustain damages; and
- (g) The extent of damage sustained by Class members and the appropriate measure of damages.

55. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct.

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

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

#### **INAPPLICABILITY OF STATUTORY SAFE HARBOR**

58. CommVault's "Safe Harbor" warnings accompanying its forward-looking statements issued during the Class Period were ineffective to shield those statements from liability.

59. Defendants are also liable for any false or misleading forward-looking statements pleaded herein because, at the time each such statement was made, the speaker knew the statement was false or misleading and the statement was authorized and/or approved by an executive officer of CommVault who knew that the statement was false. None of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection, or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to, or stated to be dependent on, those historic or present tense statements when made.

#### **PRESUMPTION OF RELIANCE**

60. At all relevant times, the market for CommVault's common stock was an efficient market for the following reasons, among others:

(a) CommVault stock met the requirements for listing, and was listed and actively traded on the NASDAQ Stock Market, a highly efficient and automated market;

(b) As a regulated issuer, CommVault filed periodic public reports with the SEC and NASDAQ;

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

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

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

62. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S. 128 (1972), because the Class' claims are grounded on Defendants' material omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's decelerating revenue growth—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of CommVault's software revenue growth, as set forth above, that requirement is satisfied here.

### **COUNT I**

#### **For Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Against All Defendants**

63. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

64. During the Class Period, Defendants carried out a plan, scheme, and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase CommVault common stock at artificially inflated prices.

65. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for CommVault common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

66. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the Company's financial well-being, operations, and prospects.

67. During the Class Period, Defendants made the false statements specified above, which they knew or recklessly disregarded to be false and misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

68. Defendants had actual knowledge of the misrepresentations and omissions of material fact set forth herein, or recklessly disregarded the true facts that were available to them. Defendants engaged in this misconduct to conceal CommVault's true condition from the investing public and to support the artificially inflated prices of the Company's common stock.

69. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for CommVault common stock. Plaintiff and the Class would not have purchased the Company's common stock at the prices they paid, or at all, had they been aware that the market prices for CommVault common stock had been artificially inflated by Defendants' fraudulent course of conduct.

70. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases of the Company's common stock during the Class Period.

71. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

## COUNT II

### **For Violation of Section 20(a) of the Exchange Act against the Individual Defendants**

72. Plaintiff repeats, incorporates, and realleges each and every allegation set forth above as if fully set forth herein.

73. The Individual Defendants acted as controlling persons of CommVault within the meaning of Section 20(a) of the Exchange Act. By virtue of their high-level positions, participation in and/or awareness of the Company's operations, direct involvement in the day-to-day operations of the Company, and/or intimate knowledge of the Company's actual performance, and their power to control public statements about CommVault, the Individual Defendants had the power and ability to control the actions of CommVault and its employees. By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

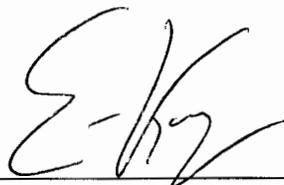
C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including attorneys' fees and expert fees; and

D. Awarding such equitable/injunctive or other further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: September 10, 2014



**CALCAGNI & KANEFSKY, THE NEW  
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