UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE COMMVAULT SYSTEMS, INC. SECURITIES LITIGATION	Master File No. 14-5628 (MAS) (LHG) **SECOND AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

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Lead Plaintiff Arkansas Teacher Retirement System ("Lead Plaintiff" or "Arkansas Teacher"), by and through its undersigned counsel, hereby brings this action on behalf of itself and all persons or entities who purchased or otherwise acquired the common stock of CommVault Systems, Inc. ("CommVault" or the "Company") during the period from May 7, 2013 through April 24, 2014, inclusive (the "Class Period"), and were damaged thereby. Excluded from the Class are Defendants (as set forth herein), present or former executive officers of CommVault, and their immediate family members (as defined in 17 C.F.R. § 229.404, Instructions 1(a)(iii) and 1(b)(ii)). As explained further below, Lead Plaintiff seeks to recover damages caused by Defendants' violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder.

Lead Plaintiff alleges the following based upon personal knowledge as to itself and its own acts and upon information and belief as to all other matters. Lead Plaintiff's information and belief is based upon, *inter alia*, the independent investigation of the undersigned counsel. This investigation included, but was not limited to, a review and analysis of: (i) CommVault's public filings with the Securities and Exchange Commission ("SEC"); (ii) research reports by securities and financial analysts; (iii) transcripts of CommVault's earnings conference calls and industry conferences; (iv) other publicly available material and data identified herein; (v) economic analyses of CommVault's securities movement and pricing data; (vi) consultations with relevant experts, including former SEC Chairman Harvey Pitt and accounting expert Harris L. Devor; and (vii) information obtained from former CommVault employees and other individuals with relevant knowledge throughout the course of counsel's investigation. Counsel's investigation into the factual allegations contained herein is continuing, and many of the relevant facts are known only by the Defendants or are exclusively within their custody or control. Lead Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for further investigation or discovery.

I. INTRODUCTION

1. This case is about a company that, faced with the loss of its primary business partner, Dell, Inc. ("Dell"), on which it relied for 20% of its revenue, engaged in an improper form of earnings management commonly referred to in accounting literature as "cookie jar" accounting. The alleged accounting scheme, which has been a hallmark of many past frauds, violated generally accepted accounting principles (GAAP), as described below and in the accompanying Declarations of former SEC Chairman Harvey L. Pitt, and Harris L. Devor, CPA (attached as Exhibits A and B, respectively).

2. Defendants' accounting scheme involved delaying the Company's recognition of software revenue in order to hide the truth that the Company's growth was decelerating. The "cookie jar" was created in the fourth quarter of fiscal 2013 (which ended on March 31, 2013)[1] by banking $6 million of software revenue into a deferred revenue "cookie jar" to be used later. Thus, at the outset of the Class Period, with a massive, unprecedented $9 million cookie jar of deferred software revenue available, CommVault set out to prove to investors that it would reach its goal of becoming a company with $1 billion in annual revenue. CommVault was a "growth story" from the day it went public, and the market understood (and Defendants never contested) that the $1 billion revenue goal meant that the Company's software revenue would regularly grow 20%, as measured quarterly on a year-over-year basis (e.g., the third quarter of 2014 would represent an increase of 20% over the revenue reported in the third quarter of 2013). Regular, reliable growth

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

was also essential for CommVault to keep pace with the market's expectations and justify the high multiple of its earnings at which its common stock traded compared with its industry peers (the "p/e" or price/earnings multiple), which traded at lower multiples. Volatility in its software revenue growth rate would be harmful for the Company's reputation and stock price.

3. The loss of and certain competition from Dell – CommVault's most important single source of revenue – posed an immediate threat to achieving these goals, but Defendants repeatedly misrepresented that there would be no drop-off in growth. To mask the slowdown in the Company's software revenue growth during the second and third fiscal quarters of 2014 (ended on September 30, 2013 and December 31. 2013, respectively), Defendants raided the deferred software revenue cookie jar, taking $4 million in each of those quarters and using it to ensure that CommVault's reported software revenue numbers were consistent with a 20% year-over-year quarterly growth rate. As discussed below, moving revenue or earnings between reporting periods for the purpose of misleading investors violates GAAP. *See* Devor Decl. ¶¶23-26; Pitt Decl. ¶14 ("the manipulation of company earnings toward a pre-determined target, reflecting company management's desire to present to the public a record of stable earnings, [is] a practice known as 'earnings smoothing.'").

4. Investors and analysts, concerned with how changes in the Dell relationship would affect CommVault's software revenue growth, specifically asked about the Company's transition away from Dell and whether CommVault was using deferred revenue to mask slowing growth. In response to these questions, Defendants falsely assured investors that they had replaced the revenue lost from Dell through other business partners, and never offered any explanation for the anomalous increase and subsequent sudden decreases in deferred software revenue. To the second point, Defendant Hammer defensively and emphatically told analysts who questioned whether the

use of deferred software revenue reflected a decline in business that they were "twisted up in [their] underwear." The market relied on Defendants' assurances that all was well, but after CommVault's "cookie jar" of deferred software revenue had been emptied, in the fourth quarter of fiscal 2014, the Company was no longer able to hide the truth: that software revenue growth had significantly decelerated due to the loss of CommVault's partnerships with Dell and the Company was unable to fill that gap.

5. As detailed below, the confluence of the following factors, particularly when considered ***together***, makes it impossible for any benign explanation of Defendants' Class Period conduct to be accepted: (i) CommVault's massive, unprecedented $6 million increase in deferred software revenue at the end of a strong fiscal 2013 (to create a deferred software revenue cookie jar by the beginning of the Class Period that was more than two and half times greater than it had ever been previously); (ii) CommVault's need to meet the Company's own $1 billion revenue target to maintain its growth story, by achieving 20% software revenue growth on a year-over-year basis; (iii) the separation from Dell as a primary business partner and revenue source; (iv) CommVault's salesforce turnover problems, which exacerbated the impact of the loss of Dell on CommVault's software revenue; (v) the acknowledgment by Defendants at a senior-level meeting in July 2013 that there had been a drop-off in business due to the changes with Dell; (vi) questions from investors and analysts concerning the Company's use of deferred software revenue during the second and third fiscal quarters of 2014, which were emphatically denied by the Defendants, combined with allegations from knowledgeable former CommVault employees concerning the Company's improper use of deferred software revenue; and, (vii) the reality that when the "cookie jar" of deferred software revenue had been exhausted, CommVault shocked the market with a very

poor fiscal 2014 fourth quarter (ended March 31, 2014), resulting in a massive 30% stock-price decline.

6. CommVault is an independent provider of data and information management software, which derives about half of its annual revenue from licensing its software applications. CommVault's software ("software revenue") is sold under the "Simpana" brand name, and consists of licensable modules that deliver backup and recovery, archive, replication, search and analytic capabilities across physical, virtual and cloud environments. Beginning in 2003, CommVault entered into a critical business partnership with Dell, which continued leading up to and after the Company went public in a 2006 initial public offering ("IPO"). From fiscal 2007 through the beginning of the Class Period, CommVault relied on Dell for approximately ***20% of its total revenue.*** Dell served as both a reseller and original equipment manufacturing partner to CommVault, meaning that, for over a decade, Dell sold CommVault's software to Dell's customers as a stand-alone product, or as integrated into Dell hardware.

7. In the latter half of 2012, Dell acquired certain of CommVault's competitors, including Quest Software.[2] As Defendants knew, instead of selling CommVault's software, as it had done in years past, Dell would now sell its own intellectual property and would no longer compensate Dell sales representatives to sell CommVault's products. Leading up to Dell's transition away from CommVault, the Company had built up a reputation of high growth following the 2006 IPO. From 2006 through 2012, CommVault's revenue ***quadrupled***, growing from $109,472,000 to $406,639,000.[3] Immediately before the beginning of the Class Period,

[2] Deagon, Brian. "CommVault Systems Oceanport, New Jersey Software Maker Helps Companies Manage Big Data, The Cloud," *Investor's Business Daily* (Jan. 3, 2013), National Edition. (Lexis).

[3] *See* CommVault Sys., Inc., Annual Report (Form 10-K), at 30 (May 25, 2007); CommVault Sys., Inc., Annual Report (Form 10-K), at 35 (May 15, 2012).

CommVault told investors to expect annual revenue to increase from approximately ***$500 million*** in fiscal 2013 to ***$1 billion "over the next few years."***[4] Analysts predicted that to meet that goal, the Company would have to grow by ***at least 20% year-over-year*** until fiscal 2017; Defendants were aware of this assumption, knew that it was based on their $1 billion target, and, despite their frequent contact with analysts and the media, did nothing to correct or contest it.

8. By the beginning of the Class Period, Defendants knew (or recklessly disregarded) that CommVault would not be able to meet 20% year-over-year quarterly software revenue growth targets without Dell. Nonetheless, Defendants falsely assured the investing public that they had replaced Dell with other business partners and that the loss of revenue from Dell had not and would not affect CommVault's achievement of its software revenue target numbers. In actuality, and as became apparent at the end of the Class Period, CommVault would not be able to grow as it had in the past due to the termination of the Dell partnerships.

9. As discussed below, knowing that its software revenue growth was going to slow down due to the inability to replace the Dell business, by the beginning of the Class Period, CommVault had placed substantial software revenue in a "cookie jar" for the rainy days that Defendants knew would soon come. Indeed, confidential witnesses ("CWs") interviewed during the investigation conducted in this matter confirmed that by the start of fiscal year 2014, Dell had refused to pay its sales representatives to sell CommVault products and the Company's pipeline of sales opportunities began shrinking. By at least July 2013, Defendants admitted internally that due to the loss of Dell's business, CommVault would not be able to meet its targets for the remainder of fiscal 2014. For example, CW1, Director of Strategic Partner Development at

[4] *See, e.g.*, CommVault Sys., Inc., Q3 2013 Earnings Conference Call, at 4 (Jan. 30, 2013). Unless otherwise indicated, all emphasis in quotations has been added.

CommVault from October 2011 through September 2014, stated that in July 2013, CW1 attended an all-hands-on-deck week-long meeting of senior executives, including Defendant Brian Carolan, CommVault's Vice President and Chief Financial Officer, and Defendant N. Robert Hammer, CommVault's Chairman, President, and Chief Executive Officer, convened by Defendants to address the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in what the Company referred to as its "funnel" to meet its target software revenue numbers. As CW1 put it, ***"We kn[e]w, based on the pipeline and losing Dell business, we're way off our numbers for the fiscal year."*** CW2, a CommVault Sales Director of the Western Division from July 2011 until October 2013 who reported to Rick Baumgart, Vice President of Western Sales, similarly confirmed that at the July 2013 meeting, ***Defendant Hammer announced that for the first time since CommVault started growing at the rate it did, there was a drop-off in business***.[5]

10. Moreover, although Defendants reported on net additions to the sales force, Defendants did not disclose that CommVault experienced extremely high turnover of its sales force during the Class Period. CW3, a CommVault Regional Sales Director who managed seven sales representatives in an eight-state territory in the Southeast from August 2010 until March 2014, stated that approximately half of the Company's sales representatives quit in 2013 as a result of the Dell transition away from CommVault, and their resultant inability to meet unrealistically high sales quotas. Because, as Defendants repeatedly reminded investors, new sales personnel took, on average, 12 months to become fully productive, the high departure rate made it virtually impossible

[5] As Exhibit C hereto, Lead Plaintiff provides an Appendix indicating the tenure, position, and job description of the former employees cited throughout this Complaint as CWs.

for CommVault to replace the business lost during the Dell transition within the time that Defendants claimed.

11. Instead of readjusting their forecasts and disclosing the truth to investors, Defendants fraudulently concealed the decline in CommVault's business and manipulated their financial results in violation of GAAP. Specifically, instead of recognizing ***millions of dollars*** in software revenue that, according to former employees of the Company, CommVault had earned in prior periods, Defendants created a software revenue "cookie jar" at the end of fiscal year 2013, when the Class Period begins and when they announced their financial results. This caused a massive, historic increase in CommVault's deferred software revenue balance, increasing it by over $6 million – ***nearly three times greater than any other deferred software revenue increase in the previous five fiscal years***. In their "cookie jar," Defendants banked a material portion of that $6 million in software revenue for the quarter as deferred software revenue that the Company would then recognize during the Class Period, primarily in the second and third fiscal quarters of 2014, to create the illusion that CommVault was meeting its 20% year-over-year growth targets. These accounting manipulations concealed from investors the software revenue deficiency caused by the loss of its partnerships with Dell and the resulting sales force attrition. As CW1 put it, ***"CommVault was skimming revenue off deferred revenue just to make the numbers look good."*** CW4, a Territory Account Manager in the Florida Region from February 2011 through March 2014 who reported to CW3, similarly confirmed that ***when the Company had enough revenue for the current quarter, it would roll some over to the next quarter so that the next quarter would look good to Wall Street.***

12. Specifically, in the second quarter of fiscal 2014, Defendants recognized nearly ***$4.5 million*** in previously deferred software revenue, falsely representing to investors that they

had achieved 20% year-over-year software revenue growth when, in reality, the Company would have missed analysts' software revenue expectations for that quarter by ***at least $3 million*** without manipulating its reported results through the use of the software revenue deferral.

13. In the third quarter of fiscal 2014, Defendants recognized another ***$4.1 million*** in previously deferred software revenue from the "cookie jar," again falsely assuring investors that they had achieved 20% year-over-year software revenue growth when, in reality, CommVault's quarterly growth without the $4.1 million would have been approximately ***14%.*** When CommVault ran out of deferred software revenue in the fourth quarter of fiscal 2014, the truth regarding its decelerating growth and the impact of the loss of Dell on the Company's business was fully revealed to investors.

14. Significantly, time and time again throughout the Class Period, analysts specifically and directly questioned both the impact of the loss of CommVault's Dell partnerships on the Company, and whether the Company's achievement of 20% year-over-year growth was due to a "cookie jar" of deferred software revenue, as opposed to actual software license growth. In response, Defendants provided emphatic assurances that they had replaced the business from Dell with alternative business partners and that their achievement of 20% year-over-year growth targets was due to ***"pure license revenue growth,"***[6] and not improper "smoothing" through the delayed recognition of deferred software revenue. For example, on the Company's conference call discussing its earnings for the second quarter of fiscal 2014, Defendant Hammer stated that the Company had "***completely mitigated any Dell risk"*** by replacing Dell with other business partners. In the third quarter of fiscal 2014, Defendant Carolan similarly represented, ***"Any kind of falloff***

[6] Defendants interchangeably refer to revenue from the sale of software licenses as both "software revenue" and "license revenue."

in Dell revenue … will just be replaced through alternative distribution channels." Defendant Hammer reiterated, ***"We've moved those accounts [with Dell] and that revenue to other distribution partners."***

15. Similarly with respect to the impact of the Company's depletion of its deferred software revenue on growth, the Company emphatically stated that there was no connection between CommVault's recognition of ***millions of dollars*** in software revenue previously (and improperly) deferred and its ability to meet its 20% year-over-year growth targets. For example, in response to a question from an analyst indicating that there was such a connection, Defendant Hammer stated, ***"That is not true… The revenue was due to … pure license [software] revenue growth."*** Defendant Hammer summarily dismissed the analyst's concerns, instructing the market, ***"Don't get overly focused on deferred because you're going to get twisted up in your underwear."***

16. The truth concerning the Company's software revenue deceleration, and Defendants' attempts to hide it by smoothing earnings, was finally revealed on April 25, 2014, when the Company ran out of deferred software revenue to bleed into income, and was thus forced to disclose current period software revenue growth of a mere 10% year-over-year, which was half of the 20% year-over-year software revenue growth investors were led to expect. Investors were shocked to learn that the Company's fiscal fourth quarter profit had declined 7.8% due to significant deceleration in software revenue growth. 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.

II. <u>JURISDICTION AND VENUE</u>

17. 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.

18. 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 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.

III. PARTIES

A. Lead Plaintiff

19. Lead Plaintiff Arkansas Teacher Retirement System ("Lead Plaintiff" or "Arkansas Teacher") is a public pension system that has been providing retirement benefits to Arkansas's public school and education employees since 1937. As of March 31, 2014, Arkansas Teacher managed approximately $14.25 billion in assets for the benefit of its members. As reflected in the certification already on file with the Court, and in the schedule of Arkansas Teacher's Class Period transactions reflected in Exhibit B attached to the Amended Class Action Complaint (ECF No. 40), Arkansas Teacher 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.

B. Defendants

20. 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 1 CommVault Way, Tinton Falls, New Jersey. The Company's common stock trades on the NASDAQ Stock Market, which is an efficient market, under ticker symbol "CVLT." As of January 21, 2015, CommVault had approximately 44.9 million shares of stock outstanding.

21. Defendant N. Robert Hammer ("Hammer") was, at all relevant times during the Class Period, CommVault's Chairman, President, and Chief Executive Officer ("CEO"). During the Class Period, Hammer reviewed, approved, and signed CommVault's filings with the SEC that contained false and misleading statements, as detailed herein. Hammer also participated in conference calls and industry conferences with securities analysts during which Hammer made additional false and misleading statements.

22. Defendant Brian Carolan ("Carolan") was, at all relevant times during the Class Period, CommVault's Vice President and Chief Financial Officer ("CFO"). During the Class Period, Carolan reviewed, approved, and signed CommVault's filings with the SEC that contained false and misleading statements, as detailed herein. Carolan also participated in conference calls and industry conferences with securities analysts during which Carolan made additional false and misleading statements.

23. Defendants Hammer and Carolan are collectively referred to as the "Individual Defendants," and together, with CommVault, the "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 before, 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, each of the Individual Defendants knew (or recklessly disregarded) 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 or misleading.

IV. BACKGROUND

A. CommVault's Software Licensing Business

24. Originally formed as a development group within Bell Labs, CommVault was incorporated in 1996 as an independent provider of data and information management software. 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. CommVault does not manufacture hardware.

25. CommVault derives about half 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 ("OEMs"). This revenue is referred to here as "software revenue"; during the Class Period it was generally referred to by the Company as "software revenue" or "license revenue." 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. Such fees and services are typically bundled with the Company's software applications, meaning that CommVault generally provides services

to customers who have previously purchased CommVault software. Since service and maintenance revenue is made up of sales primarily to customers who have previously purchased software licenses, CommVault's service revenue is effectively dependent upon software/license sales. Growth in the Company's total revenue is thus driven by growth in software revenue.

26. Like many software companies, CommVault maintains a sizable amount of deferred revenue on its balance sheet. Before the start of the Class Period, nearly all of CommVault's deferred revenue had consisted 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 2011 through the third quarter of fiscal 2013, the Company's deferred software revenue liability balance fluctuated from about $722,000 to $3.1 million, as reflected in the chart at ¶106 below. Accounting rules require the Company to book these unearned revenues as liabilities until the revenues are (i) realized or realizable and (ii) earned, at which time CommVault is required to recognize those revenues in its income statement, as detailed below in Section IV.B. Due to the extended payment and performance obligations under the Company's service and maintenance agreements, those agreements generate a substantial amount of deferred revenue.

B. <u>CommVault's Obligation to Timely Recognize Revenue</u>

27. CommVault is obligated under the relevant U.S. GAAP and other accounting provisions and guidance to recognize software revenue when certain criteria are met. In the fourth quarter of fiscal 2013, CommVault achieved historic software revenue growth. Instead of recognizing software revenue on particular licensing transactions in that quarter, Defendants improperly created a "cookie jar" of deferred software revenue which had grown to ***$9.2 million*** by the end of fiscal year 2013. They later used that "cookie jar" to mask growth deceleration

throughout the Class Period, as detailed below in Section V.D. Such manipulations of financial statements violate GAAP.

1. "Cookie Jar" Accounting and Earnings Management

28. Former SEC Chairman Arthur Levitt described "cookie jars" as one of the main "gimmicks" used by public companies to manipulate their earnings: "they stash accruals in cookie jars during the good times and reach into them when needed in the bad times." The practice became popular in the 1990s and 2000s as the economic environment provided opportunities for companies to manipulate their earnings to produce more linear, stable results. Devor Decl. ¶27.

29. The practice of deferring the recognition of revenues to a later period in order to manipulate earnings is a GAAP violation. *See* Devor Decl. ¶22; Pitt Decl. ¶15. As referenced in the accounting literature described below and explained in the accompanying Pitt and Devor Declarations, when companies misleadingly shift revenue or earnings from one period to another for the purpose of making the latter period look better, it violates GAAP. This practice is known as "cookie jar" accounting, "earnings management" or "smoothing," and constitutes an improper manipulation of the subject financial statements. The use of such accounting manipulations is often tied to an entity's need to achieve or report predetermined financial results or stable earnings. *See* Devor Decl. ¶¶23, 27; Pitt Decl. ¶14.

30. The establishment and/or manipulation of so-called "cushion" or "cookie jar" reserves has been identified as an accounting practice where entities improperly use portions of the results from periods of good financial performance to set aside amounts (e.g., through the creation of accruals or reserves) that can be reversed in future periods, when profits may be lower than management or market expectations. In such instances, the reversal of cookie jar accruals, improperly set up to begin with, serves to reduce expenses or, as here, increase revenue (for instance) and, ultimately, allows the entity to report better (albeit misstated or manipulated)

financial results in the period of reversal (e.g., when the previously deferred revenue is recognized). Devor Decl. ¶23.

31. Creating a cookie jar to move revenue from one period to another is misleading because recognizing revenue and earnings in the proper periods is critical to the transparency of financial statements. Indeed, the accounting literature places significant emphasis on the fact that one of the goals of financial statements based on accrual accounting (as CommVault's were at all relevant times) "is to account in the periods in which they occur for the effects on an entity of transactions and other events and circumstances" through the use of the "matching principle" – matching revenues to the period to which they relate. *See* Devor Decl. ¶¶19-20 (citing FASCON 6). Moreover, accounting guidance requires that in order for financial information to be reliable, it must "faithfully represent[] what it purports to represent." Devor Decl. ¶16 (citing FASCON 2).

32. "In view of such principles, it would be improper under GAAP to defer the recording of revenues to a later period if such revenue is both (1) realized and realizable and (2) earned, especially if the purpose of such is to manipulate earnings …." Devor Decl. ¶22. Here, "Plaintiff alleges that Defendants employed such a practice during the Class Period and that, by virtue of such, were able to report revenue growth measures that equaled estimates that had been communicated to the public." Devor Decl. ¶26. Accordingly, Devor concludes that "CommVault improperly utilized what is known in the accounting and investing worlds as 'cookie jar' accounting, in violation of GAAP." Devor Decl. ¶39.

33. Similarly as former Chairman Pitt explains, the use of a "cookie jar" to improperly smooth earnings creates "a fictitious or materially misleading picture of a company's actual results of operation . . . , and investors and shareholders are deceived." Pitt Decl. ¶15. Pitt concludes:

> Here, in anticipation of losing revenues generated by its critical primary business partner, Dell, and in light of the "need" to continue a linear trajectory of high

> growth, the defendants allegedly claimed – repeatedly and falsely – that the Company would continue to grow unabated and that it had successfully replaced any lost Dell revenues. To create the façade of its success in maintaining that growth rate, CommVault allegedly improperly deferred revenue that should have been recognized much earlier, and used that revenue to hide from investors and shareholders the actual fact that CommVault was experiencing declining revenue growth. Once CommVault's "cookie jar" of deferred software revenues was dissipated, the Company was forced to admit the truth, and its stock dropped materially – by approximately 30%.

Pitt Decl. ¶16 (internal citations omitted).[7]

2. Relevant GAAP and Accounting Provisions and Guidance

34. GAAP refers to the framework of guidelines for financial accounting used by accountants to prepare financial statements. The SEC has the statutory authority to codify GAAP, and has delegated that authority to the Financial Accounting Standards Board ("FASB"). SEC Regulation S-X states that financial statements filed with the SEC that are not presented in accordance with GAAP will be presumed to be misleading, despite footnotes or other disclosures. During the Class Period, CommVault represented that its financial statements were presented in conformity with GAAP.

35. Statement of Financial Accounting Concepts ("FASCON") 8 governs the general purpose of financial reporting, including an entity such as CommVault's obligation to present financial information in a way that is "relevant" and that "faithfully represent[s] what it purports to represent."

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[7] In addition, as here, where the market was considering growth on a year-over-year basis, reporting the full amount of Q4 2013 revenue would not only have precluded the creation of the $9 million "cookie jar" but it would have also set the bar for Q4 2014 revenues higher by $6 million dollars (the amount deferred in Q4 2013). As a result, the quarterly revenue growth reported in Q4 2014 would have looked substantially worse if the cookie jar had not been augmented by $6 million in 2013.

36. Specifically, FASCON 8 provides that "[t]he objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity." With respect to future cash flow, FASCON 8 further provides that "[i]nvestors', lenders' and other creditors' expectations about returns depend on their assessment of the amount, timing and uncertainty of (the prospects for) future net cash inflows to the entity," and "[c]onsequently, existing and potential investors, lenders and other creditors need information to help them assess the prospects for future net cash inflows to an entity." Among other things, investors and creditors are interested in knowing "how efficiently and effectively the entity's management and governing board have discharged their responsibilities to use the entity's resources." Those responsibilities include "ensuring that the entity complies with applicable laws, regulations and contractual provisions."

37. As noted, FASCON 8 further provides that, for financial information to be useful, "it must be relevant and faithfully represent what it purports to represent. The usefulness of financial information is enhanced if it is comparable, verifiable, timely, and understandable." Moreover, FASCON 8 states:

> Financial reports represent economic phenomena in words and numbers. To be useful, financial information not only must represent relevant phenomena, but it also must faithfully represent the phenomena that it purports to represent. To be a perfectly faithful representation, a depiction would have three characteristics. It would be complete, neutral, and free from error.

38. Similarly, FASCON 2, Qualitative Characteristics of Accounting Information ("FASCON 2"), ¶¶ 58-59, 62), provides that reliable disclosure must have representational faithfulness, verifiability, and neutrality. Reliability is "[t]he quality of information that assures that information is reasonably free from error and bias and faithfully represents what it purports to

represent." (FASCON 2, Glossary of Terms). Accordingly, reliability implies "completeness" of information, such that "nothing material is left out of the information that may be necessary to ensure that it validly represents the underlying events and conditions." (FASCON 2, ¶ 79).

39. GAAP defines the concept of "recognition," which is "the process of formally recording or incorporating an item into the financial statements of an entity, [and] is critical to ensuring that certain financial elements are reflected in financial statements." (FASCON No. 6, Elements of Financial Statements ("FASCON 6"), ¶ 143). Thus, FASCON 6 states that "an asset, liability, revenue, expense, gain, or loss may be recognized (recorded) or unrecognized (unrecorded)." (FASCON 6, ¶ 143).

40. Within the accounting framework underlying GAAP, and for purposes of accounting for business activities and results in accordance with GAAP, an entity must recognize items pursuant to the "accrual" method of accounting. The objective of accrual accounting is to reflect transactions within the financial reporting periods to which their component costs and associated revenues relate:

> Accrual accounting uses accrual, deferral, and allocation procedures whose goal is to relate revenues, expenses, gains, and losses to periods to reflect an entity's performance during a period instead of merely listing its cash receipts and outlays. Thus, recognition of revenues, expenses, gains, and losses and the related increments or decrements in assets and liabilities—including matching of costs and revenues, allocation, and amortization—is the essence of using accrual accounting to measure performance of entities. The goal of accrual accounting is to account in the periods in which they occur for the effects on an entity of transactions and other events and circumstances, to the extent that those financial effects are recognizable and measurable.

FASCON 6, ¶ 145.

41. Thus, at the core of accrual accounting is matching revenues and expenses to both each other and the periods to which they relate, which is often referred to as the "matching principle." FASCON 6 describes this, in relevant part, as follows:

> Matching of costs and revenues is simultaneous or combined recognition of the revenues and expenses that result directly and jointly from the same transactions or other events. In most entities, some transactions or events result simultaneously in both a revenue and one or more expenses. The revenue and expense(s) are directly related to each other and require recognition at the same time.

FASCON 6, ¶ 146.

42. GAAP provides a series of rules for when and how to "recognize" revenue. Chief among these is FASB's Accounting Standards Codification ("ASC") Topic 605.[8]

43. ASC Topic 605 governs when companies such as CommVault are required to recognize revenue, including revenue generated from the sale or licensing of software. Specifically, CommVault is required to recognize revenue when two criteria are met: (i) the revenue is realized or realizable, and (ii) the revenue is earned. With respect to the first prong, ASC Topic 605 provides, in relevant part:

> Revenue and gains are realized when products (goods or services), merchandise, or other assets are exchanged for cash or claims to cash. . . . [R]evenue and gains are realizable when related assets received or held are readily convertible to known amounts of cash or claims to cash.[9]

44. With respect to the second prong concerning "earnings," ASC Topic 605 provides, in relevant part:

> Revenue is not recognized until earned. … [A]n entity's revenue-earning activities involve delivering or producing goods, rendering services, or other activities that constitute its ongoing major or central operations, and revenues are considered to

[8] In June 2009, the FASB issued Statement of Financial Accounting Standards No. 168, which announced the launch of its Accounting Standards Codification ("ASC" or the "Codification"), declaring it "the single source of authoritative nongovernmental U.S. generally accepted accounting principles." The Codification, effective as of September 2009, organizes the many existing pronouncements that constituted U.S. GAAP at the time into a consistent, searchable format organized by Topics.

[9] ASC 605-10-25-1.

> have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by revenues.[10]

45. Additional guidance concerning the appropriate time to recognize revenue is contained in FASCON 5, which is specifically referenced by and incorporated into GAAP. FASCON 5 states, in relevant part:

> In recognizing revenue and gains: The two conditions (being realized or realizable and being earned) are usually met by the time product or merchandise is delivered or services are rendered to customers, and revenues from manufacturing and selling activities and gains and losses from sales of other assets are commonly recognized at time of sale (usually meaning delivery).[11]

46. With respect to software revenue recognition, specifically, ASC Topic 985 further provides:

> If the arrangement does not require significant production, modification, or customization of software, revenue shall be recognized when all of the following criteria are met:
>
> a. Persuasive evidence of an arrangement exists.
> b. Delivery has occurred.
> c. The vendor's fee is fixed or determinable.
> d. Collectibility is probable.[12]

47. When one or more of the above criteria are not met, a company is required to defer revenue recognition until the accounting period during which each element is met.

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[10] *Id.*

[11] FASCON 5, ¶ 84.

[12] ASC 985-605-25.

3. CommVault's Internal Accounting Policies

48. Throughout the Class Period, CommVault represented that it recognized software revenue upon delivery using what is referred to as the "residual method," as explained in its SEC filings.[13]

49. Defendants further stated that "assuming all basic revenue recognition criteria are met, software revenue is recognized upon delivery of the software license using the residual method." The Company identified its "four basic revenue recognition criteria" in its SEC filings throughout the Class Period.[14]

50. With respect to the circumstances under which revenue would be deferred, Defendants stated:

> Deferred revenues represent amounts collected from, or invoiced to, customers in excess of revenues recognized. This results primarily from the billing of annual customer support agreements, as well as billings for other professional services fees that have not yet been performed by the Company and billings for license fees that are deferred due to one of the recognition criteria not being met. The value of deferred revenues will increase or decrease based on the timing of invoices and recognition of software revenue. The Company expenses internal direct and incremental costs related to contract acquisition and origination as incurred.[15]

[13] *See* CommVault Sys., Inc., Annual Report (Form 10-K), at 64 (May 14, 2013); CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 6 (Aug. 1, 2013); CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 6 (Oct. 31, 2013); CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 6 (Jan. 31, 2014).

[14] CommVault Sys., Inc., Annual Report (Form 10-K), at 65-66 (May 14, 2013); *see also* CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 7-8 (Aug. 1, 2013) (identifying the same criteria); CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 7-8 (Oct. 31, 2013) (same); CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 7-8 (Jan. 31, 2014) (same).

[15] CommVault Sys., Inc., Annual Report (Form 10-K), at 69-70 (May 14, 2013); *see also* CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Aug. 1, 2013) (virtually identical language); CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Oct. 31, 2013) (same); CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Jan. 31, 2014) (same).

51. In the fourth quarter of fiscal 2013, CommVault achieved historic software revenue growth, and deferred record amounts of software revenue. Specifically, from the beginning of fiscal 2011 through the third quarter of fiscal 2013, the Company's balance in its deferred software revenue account was as low as $722,000 and was never greater than $3.1 million, as reflected in the chart at ¶109 below. In the fourth quarter of fiscal 2013, CommVault's deferred software revenue jumped from $3.1 million to ***nearly $9.2 million***. At the outset of the Class Period, Defendants improperly deferred revenue recognition on certain license sales to create a $9.2 million "cookie jar" reserve that they would use during the Class Period to hide from investors the fact that CommVault was unable to generate enough software revenue through the sale of licenses to meet its revenue growth targets.

52. As detailed below in Section V.D., multiple CWs confirmed that Defendants improperly deferred the timely recognition of this revenue to make it appear that the Company's software revenue had continued to grow as fast as expected, when in actuality, software revenue growth was decelerating. For example, CW1 confirmed that ***"CommVault was skimming revenue off deferred revenue just to make the numbers look good."*** CW4 similarly confirmed that ***when the Company had enough revenue for the current quarter, it would roll some over to the next quarter so that the next quarter would look good.*** By deferring recognition of the software revenue put into its "cookie jar" until the second and third quarters of fiscal 2014, and then falsely attributing its ability to meet software revenue targets to "pure software license growth," Defendants were able to create the illusion that CommVault was still a high growth Company, notwithstanding the loss of its partnerships with Dell.

53. The fluctuations in CommVault's deferred software revenue balance further reinforce this theme. The CW statements above allege that CommVault built revenue deferrals

during good quarters, and drew down those deferrals as needed to achieve certain results. The changes in deferred software revenue reported in CommVault's financial statements are consistent with such allegations. CommVault's deferred software revenue balance ***increased*** during the otherwise excellent fourth quarter of 2013, and ***decreased*** during the second and third quarters of 2014, which, without the recognition of deferred software revenue from the "cookie jar," would not have met the 20% year-over-year growth threshold. Devor also noted this in his Declaration, indicating that the above witness statements are consistent with both his understanding of a cookie jar accounting scheme and with the "growth and decline of the deferred revenue balances reflected in CommVault's public filings during the relevant timeframe." Devor Decl. ¶34.

V. OVERVIEW OF THE FRAUD

A. Maintaining High Software Revenue Growth Through Its Relationship with Dell Is Critical to CommVault's Business

54. CommVault began operating as a publicly traded company in 2006. After the IPO, CommVault experienced rapid growth, and the Company's continued growth was of critical importance to investors. For example, in a report entitled, *Diamond in the Rough; Standout Fourth-Quarter Performance as Enterprise Momentum Continues*, dated May 7, 2013, William Blair analysts stated, "We continue to believe that CommVault's guidance generally leaves ample room for upside given the company's momentum and history of outperformance." In a July 30, 2013 report entitled, *Share Gains and Accelerating Growth Justify Valuation, Raising PT to $96*, Piper Jaffray similarly noted "CommVault's attractive growth profile" and the attractiveness of CommVault shares. Consistent with its record of historic growth, CommVault 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 ***at least 20% year-over-year*** to reach $1 billion by fiscal 2017.[16]

55. Maintaining its revenue growth at a steady, predictable rate was also vital for CommVault because linear, predictable growth would justify a share price that reflects a higher multiple of the Company's earnings.[17] This is well recognized in the finance literature, as investors value companies with predictable growth rates at higher multiples of earnings than those with more volatile, unpredictable revenues, all else being equal. For example, Professor Dain C. Donelson of the University of Texas at Austin and Professor Robert J. Resutek of Dartmouth wrote in a 2011 article that "past earnings volatility" makes future earnings less predictable and is linked to "a series of negative firm outcomes," including "lower future earnings" and "higher cost of equity capital."[18] Thus, according to another finance article, "P/E ratios will be higher for stocks with more predictable earnings growth and lower for stocks with less predictable earnings growth."[19] Because Defendants led investors to believe that CommVault's high rate of software revenue growth was stable and predictable, its stock traded at much higher multiples of earnings before and during the Class Period than peer companies identified by Standard & Poor's:

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[16] *See* Nathan Hamilton, *Is CommVault System Inc's $1 Billion Growth Plan on Track?* The Motley Fool, June 1, 2014, http://www.fool.com/investing/general/2014/06/01/is-commvault-system-incs-1-billion-growth-plan-on.aspx?source=isesitlnk0000001&mrr=1.00.

[17] This is typically referred to as the price/earnings multiple or just "P/E" and reflects the ratio of a company's share price divided by its earnings per share ("EPS"). A company with earnings per share of $1.00 and a share price of $10.00 would have a P/E multiple of 10. A company with earnings per share of $1.00 and a share price of $100.00 would have a P/E multiple of 100.

[18] Dain C. Donelson and Robert J. Resutek, "The predictive qualities of earnings volatility and earnings uncertainty," available at http://faculty.tuck.dartmouth.edu/images/uploads/faculty/robert-resutek/DR3_0913.pdf.

[19] Thomas G. Smith, Jr., C.F.A., "How To Find P/E And PEG Ratios", available at http://www.investopedia.com/articles/fundamental-analysis/09/price-to-earnings-and-growth-ratios.asp.

P/E Ratios of CommVault and "Systems Software Peer Group" Companies			
Date	**CommVault**	**Oracle Corp.**	**Progress Software**
2/8/2013	77	16	31
5/7/2013	80	15	20
5/15/2013	67	16	21
7/30/2013	77	14	20
8/2/2013	76	14	20
10/29/2013	69	14	16
10/30/2013	67	14	16
1/29/2014	57	16	18
4/26/2014	36	17	21

Source: S&P Capital IQ "Stock Reports" about CommVault, dated the dates indicated.

56. As reflected in the above table, CommVault's P/E multiple declined precipitously as of both January 29, 2014, when CommVault first revealed a material reduction in Dell revenue, and then on April 26, 2014, two days after the corrective disclosure that ends the Class Period.

57. From the IPO through the beginning of the Class Period, CommVault credited its partnerships with Dell as the source of a material percentage of its total revenue. CommVault's partnerships with Dell took two forms: an original equipment manufacturer ("OEM") agreement and a reseller agreement, both of which were entered into before the IPO.[20] OEMs, including Dell, sold, marketed, and supported CommVault's software applications or incorporated CommVault's software applications into their own hardware and systems, which they then sold.[21] CommVault similarly relied upon resellers, including Dell, to market and distribute CommVault's software

[20] CommVault Sys., Inc., Registration Statement (Form S-1), at 12 (Mar. 17, 2006). CommVault entered into the OEM agreement with Dell in December 2003, and the reseller agreement with Dell in April 2005. *See* CommVault Sys., Inc., Registration Statement (Amendment No. 2 to Form S-1), Exhibit 10.18, at 1 (June 30, 2006); CommVault Sys., Inc., Registration Statement (Amendment No. 2 to Form S-1), Exhibit 10.23, at 1 (June 30, 2006).

[21] CommVault Sys., Inc., Registration Statement (Form S-1), at 13 (Mar. 17, 2006); *see also, e.g.*, CommVault Sys., Inc., Annual Report (Form 10-K) (May 16, 2008).

applications and services.[22] OEMs and resellers principally constituted CommVault's "indirect sales channel." In sum, as an OEM and reseller, Dell purchased CommVault's software and then sold it to Dell customers as a stand-alone product or as incorporated into Dell's hardware.

58. Following the IPO, CommVault's partnerships with Dell consistently accounted for a material percentage of the Company's total revenue, as reflected in the chart below:

Fiscal Year	Percentage of Revenue Attributed to Dell Partnerships
2007	19%[23]
2008	24%[24]
2009	23%[25]
2010	24%[26]
2011	23%[27]
2012	22%[28]
2013	20%[29]

59. Moreover, the Company repeatedly touted its partnership with Dell as an ongoing source of future revenue in its public statements. For example, on the Company's August 2, 2007 earnings conference call for the first quarter of fiscal 2008, Defendant Hammer stated, "Our Dell business is not only strong, it's very strong. And as I mentioned in my earnings script, we have a

[22] CommVault Sys., Inc., Registration Statement (Form S-1), at 14 (Mar. 17, 2006).

[23] CommVault Sys., Inc., Annual Report (Form 10-K), at 60 (May 19, 2009).

[24] *Id.* at 10.

[25] *Id.*

[26] CommVault Sys., Inc., Annual Report (Form 10-K), at 10 (May 18, 2010).

[27] CommVault Sys., Inc., Annual Report (Form 10-K), at 10 (May 17, 2011).

[28] CommVault Sys., Inc., Annual Report (Form 10-K), at 12 (May 15, 2012).

[29] CommVault Sys., Inc., Annual Report (Form 10-K), at 20 (May 14, 2013).

number of discussions with Dell to actually broaden our business with them with some pretty innovative ideas and those discussions are going well."

60. The Company continued to tout its relationship with Dell in the subsequent years leading up to the beginning of the Class Period. For example, during the Company's May 8, 2012 earnings conference call for the fourth quarter of fiscal 2012, Defendant Hammer stated, "Our relationship with Dell continues to be strong, and we continue to work closely with Dell strategically." Defendant Hammer further noted the "significant opportunities open to us with the Dell partnership for collaborative solutions in the enterprise segment of the market [*i.e.*, transactions over $100,000] for both current and future CommVault technologies. ***The bottom line is we expect continued strong results from this partnership in FY'13 and beyond."***

61. In the fiscal quarters immediately before the beginning of the Class Period, Dell acquired its own software products that were similar to CommVault's intellectual property and began competing with the Company in the small and medium business market. As Defendant Hammer stated on the Company's July 31, 2012 earnings conference call for the first quarter of fiscal 2013, "Dell … will very aggressively market their newly acquired products and there will be some overlap [with CommVault's products]." In response, Defendants began to move CommVault's small and medium business segment transactions away from Dell and attempt to find alternative partners to sell CommVault's software to small and medium business customers.

62. Notwithstanding the beginning of a partial transition away from Dell in the small and medium business segment, Defendants continued to work closely with Dell on enterprise transactions (*i.e.*, transactions over $100,000), and revenue generated from the Company's partnerships with Dell continued to constitute a material portion of the Company's revenue. For example, Defendant Carolan stated on the Company's January 30, 2013 earnings conference call

for the third quarter of fiscal 2013, "Sales through [the Company's] Dell relationships accounted for approximately 19% of total revenues for the quarter…. The majority of [the Company's] Dell revenues continue to come from our enterprise installed base …." Defendant Carolan reiterated, "We will continue to partner with Dell in the enterprise segment of the market, where we have highly differentiated, innovative solutions based on our unique software platform."

63. At the beginning of the Class Period, Defendants represented that their strategy of focusing "efforts with Dell, only in the enterprise market, has worked well for both CommVault and Dell." However, Defendants stated that because they believed that Dell was focused on marketing its own intellectual property in the small and medium business market, CommVault had determined to transition away from Dell in the enterprise segment as well, as detailed below.

B. Defendants Falsely Assure Investors That They Have Maintained High Software Revenue Growth Without Dell

64. The beginning of the Class Period brought in "record revenues" for CommVault, including 23% year-over-year growth in software revenues in the fourth quarter of fiscal 2013, and 25% software revenue growth for the full fiscal year.[30] In its May 7, 2013 Form 8-K announcing its fourth quarter and fiscal 2013 financial results, the Company principally attributed its software revenue growth to "another quarter of record enterprise software deals (transactions greater than $100,000) …." During its May 7, 2013 earnings conference call for the quarter, and consistent with the prior seven years of revenue generation from the CommVault-Dell partnerships, Defendant Carolan stated, "Sales through our Dell relationships accounted for approximately 19% of total revenues for the quarter. Total quarterly Dell revenues grew 8% sequentially, and were flat year-over-year."

[30] CommVault Sys., Inc., Current Report (Form 8-K) (May 7, 2013).

65. Defendant Carolan also addressed CommVault's efforts to transition its small and medium business away from Dell due to Dell's acquisition and marketing of its own intellectual property (and not CommVault software) in this market. Defendant Carolan represented that the Company's efforts to transition its small and medium business away from Dell had been successful, stating, ***"we have successfully shifted most of our SMB [small and medium business] business to non-Dell distribution partners."*** Later on the same call, Defendant Hammer similarly stated, ***"we shifted all … of our SMB business from Dell to other channels."***

66. Defendant Carolan also represented that following the Company's decision to shift its small and medium business out of Dell, it had focused the Dell relationship on the enterprise business, and that effort had also been a success. Defendant Carolan stated, "Our strategy of focusing our efforts with Dell, only in the enterprise segment, ***has worked well*** for both CommVault and Dell."

67. Also during the May 7, 2013 call, analysts questioned the Company's ability to maintain software revenue growth without Dell, and in response, Defendants provided concrete assurances that the transition away from Dell would not adversely affect the Company's growth. For example, in response to an analyst's question concerning the impact on CommVault of the move away from Dell, given the historically consistent revenue the Company attributed to Dell, Defendant Hammer reiterated that the Company was taking very clear action to ensure that the revenue previously generated through Dell would be generated through other distribution partners. Defendant Hammer stated, "we do not operate on hope. We operate on plans that we can execute …. [W]e're taking ***very clear, direct action***, over time, to move more of our enterprise revenue that's currently at Dell, into other distribution partners …."

68. The market reacted positively to Defendants' assurances. For example, on May 7, 2013, in an analyst report entitled *Raising Target To $90. Q4 Shows Growth Story Intact. Outperforming In A Challenging Environment*, Lake Street Capital Markets stated:

> Dell (19% of Q4 revenue) has made clear it prefers to market its branded product to SMB [small and medium business] partners. ***CommVault saw the move coming a year ago and feels it has sufficiently developed alternative channels so that a downward percent-of-revenue trend at Dell will not upset the CommVault growth story.***

69. Also on May 7, 2013, Piper Jaffray similarly stated in an analyst report entitled *Solid Q4 Results; Simpana 10 Just Getting Started; OW, $86 PT*, "Looking forward, we expect that any potential fallout from CommVault's relationship with Dell, which accounted for 19% of FQ4 (Mar) revenue, can be addressed through increased business with Arrow [another CommVault distribution partner]."

70. For the next three quarters of fiscal 2014, Defendants continued to represent that the shift away from Dell had no impact on the Company's overall revenue and that Dell had been replaced, while the revenue generated from CommVault's Dell partnerships, which included both new software revenue and service revenue from licenses sold in prior periods, precipitously declined, as reflected in the chart below:

Reporting Period	Percentage of Total Revenue Attributed to Dell	Change
Q4 2013 (ended March 31, 2013)	19%[31]	Up 8% sequentially; Flat year-over-year[32]
Q1 2014 (ended June 30, 2013)	20%[33]	Up 2% sequentially; Up 13% year-over-year[34]
Q2 2014 (ended Sept. 30, 2013)	19%[35]	Flat sequentially; Up 11% year-over-year[36]
Q3 2014 (ended Dec. 31, 2013)	11%[37]	Down 38% sequentially; Down 28% year-over-year[38]
Q4 2014 (ended March 31, 2014)	Not Reported (Less than 10%)[39]	Not Reported

71. For example, during CommVault's July 30, 2013 earnings call for the first quarter of fiscal 2014 (ended June 30, 2013), Defendant Carolan reported that the Company continued to rely upon Dell for 20% of its total revenue, stating, "Sales through our Dell relationships accounted for approximately 20% of total revenues for the quarter." Nonetheless, Defendant Carolan represented, ***"we remain confident in our ability to continue to achieve solid double-digit revenue growth during FY 2014 despite the continued shift away from Dell distribution."***

72. During the Company's October 29, 2013 earnings conference call for the second quarter of fiscal 2014, Defendant Carolan represented that, again, "[s]ales through our Dell

[31] CommVault Sys., Inc., Q4 2013 Earnings Conference Call, at 5 (May 7, 2013).

[32] *Id.*

[33] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Aug. 1, 2013).

[34] CommVault Sys., Inc., Q1 2014 Earnings Conference Call, at 7 (July 30, 2013).

[35] CommVault Sys., Inc., Q2 2014 Earnings Conference Call, at 4 (Oct. 29, 2013).

[36] *Id.*

[37] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 10 (Jan. 31, 2014).

[38] CommVault Sys., Inc., Q3 2014 Earnings Conference Call, at 3 (Jan. 29, 2014).

[39] No reported percentage, indicating that Dell-related revenue as a percentage of total revenue had dropped below 10%. *See* CommVault Sys., Inc., Q3 2014 Earnings Conference Call, at 3 (Jan. 29, 2014).

relationships accounted for approximately 19% of total revenues for the quarter." On the same call, an analyst specifically asked Defendant Hammer to comment on the distribution partners that Defendants stated had replaced Dell, including Hitachi Data Systems ("Hitachi") and NetApp. In response, Defendant Hammer again represented that the Dell risk had been mitigated. Defendant Hammer stated:

> Hitachi, in the field, we have got, I would say globally, extremely good traction on very high growth. Obviously, we have done really well in the US with Arrow and the whole distribution network, the resale network underneath them, particularly on some of the higher velocity initiatives in the Dell replacement with partners like CDW. ***We had to completely mitigated [sic] any Dell risk.*** With those kind of initiatives, you will see it in our numbers going forward where Dell is going to go down. Our growth will continue to be – likely continue to be really solid….

73. In its Form 10-Q for the second quarter of fiscal 2014 (ended September 30, 2013) filed on October 31, 2013, the Company announced that it had decided to terminate its OEM agreement with Dell as of December 16, 2013, but that the reseller agreement with Dell remained in place. Defendants further reported that "[s]ales through the Company's reseller and original equipment manufacturer agreements with Dell Inc. (Dell) totaled 20% and 21% of total revenues for the six months ended September 30, 2013 and 2012, respectively."

74. In response to this disclosure, the SEC issued a comment letter to Defendant Carolan, dated January 3, 2014, reflecting the SEC's concern about the impact of the terminated OEM agreement on the Company's financial results.[40] Specifically, the SEC asked CommVault:

> Please tell us the percentage of revenue generated from each of these agreements [the reseller agreement and the OEM agreement] with Dell for the six months ended September 30, 2013 and the twelve months ended March 31, 2013. Also, tell us what consideration was given to including such information in future filings in

[40] Letter from Patrick Gilmore, Accounting Branch Chief, SEC, to Brian Carolan, CFO, CommVault Sys., Inc. (Jan. 3, 2014), available at http://www.sec.gov/Archives/edgar/data/1169561/000000000014000393/filename1.pdf.

> order to provide investors with a better sense as to the impact of the terminated agreement on your results of operations in the future.[41]

75. By letter dated January 14, 2014, Defendant Carolan provided the SEC with the requested percentages, and stated, *inter alia*: "we believe that the impact of the terminated OEM agreement ***is not material to our business or results of operations*** and that ***our prior disclosures are adequate to allow investors to understand the potential impact to our results.***"[42]

76. During the Company's January 29, 2014 earnings conference call for the third quarter of fiscal 2014 (ended December 31, 2013), the truth regarding the impact of the loss of the Company's Dell partnerships and specifically, the Company's inability to replace its Dell revenue with alternative distribution partners, was partially revealed. Defendant Hammer disclosed that, for the first time, revenue generated from the Company's Dell partnerships had significantly declined, stating, "Sales through our Dell relationships accounted for approximately 11% of our total revenues for the quarter. ***Total quarterly Dell revenues were down 28% year-over-year and 38% sequentially."*** In combination with the substantial decline in Dell revenue, the Company recognized ***$4.1 million in previously deferred software revenue for the quarter,*** as detailed further below. Without the recognition of this $4.1 million, the Company's quarterly growth would have been a ***mere 14%*** – six percent lower than the 20% investors expected, as detailed below.

77. The sharp and dramatic decline in Dell revenue, together with the Company's recognition of $4.1 million in previously deferred software revenue, partially revealed to investors, for the first time, that not only was Dell revenue decreasing, but the Company was unable to

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[41] *Id*.

[42] Letter from Brian M. Carolan, CFO, CommVault Sys., Inc., to Patrick Gilmore, Accounting Branch Chief, SEC (Jan. 14, 2014), available at http://www.sec.gov/Archives/edgar/data/1169561/000119312514010826/filename1.htm.

replace that software revenue through alternative distribution partners and meet the 20% year-over-year software revenue growth target. Instead, the Company had resorted to the recognition of millions of dollars in previously deferred software revenue, without which it would not have hit the 20% growth rate.

78. The market reacted negatively to this news. The price of CommVault's stock dropped significantly, from a closing price of $76.10 per share on January 28, 2014 to a closing price of $69.44 on January 29, 2014 – a decline of nearly 9%. However, Defendants continued to reassure investors that Dell revenue had been replaced through other channels. For example, on the January 29, 2014 call, an analyst asked about the impact of the "sharp falloff in the Dell relationship." Defendant Carolan reiterated, "***Any kind of falloff in Dell revenue … will just be replaced through alternative distribution channels.***" On the same call, Defendant Hammer similarly stated that the Company's transition away from Dell had been a success:

> We started -- as we extracted from Dell we did two things. ***We successfully -- everybody thought we couldn't, in a few quarters, navigate our way out of Dell; for all practical purposes, we're out. We've moved those accounts and that revenue to other distribution partners.*** Secondly, we started to build our own, I'll call it, mid-market capability and started to roll out products into that mid-market.

79. For the remainder of the Class Period, Defendants continued to assure investors that the loss of CommVault's partnerships with Dell had no impact on the Company's revenue. For example, during a Piper Jaffray Technology, Media and Telecommunications Conference on March 11, 2014, Andy Nowinski from Piper Jaffray questioned the Company's achievement of the same revenue growth numbers without Dell:

> Maybe if we just turn toward your end markets now, last quarter your OEM agreement with Dell terminated in the December quarter of 2013. ***It's pretty unique, in my opinion, for a company to basically take a 25% contributor to total revenue and then completely vacate that channel and then not miss a beat in terms of revenue growth***. And so I guess, can you give us any color in terms of what have you been doing there to move away from Dell?

80. In response, Defendant Hammer stated:

> So we clearly did -- so we don't have to go through all the background as to why. But we -- you know, I think we said earlier that we control a lot of those accounts. ***And what we did is we moved those accounts to other resellers, in a very detailed, programmatic way***. …
>
> And it was done as a major project, very detailed, very structured. It took a lot of energy and effort, but ***it's done***. …
>
> When we did that, ***we also moved revenue to the high velocity midmarket with partners like [TBW] [sic, CDW] and bundled products specifically to the midmarket. We did that, and at the same time we're moving our enterprise guys to the high end enterprise.*** …

81. In addition, Defendants disclosed during the Company's earnings conference calls for the first, second, and third quarters of fiscal 2014 that CommVault had failed to meet its hiring targets, and had a "headcount hiring shortfall."[43]

C. Contrary to Its Assurances to Investors, CommVault Is Unable to Maintain Software Revenue Growth as the Dell Relationship Is Severed

82. Numerous CWs confirmed that contrary to Defendants' representations to investors, CommVault had not been able to replace the revenue previously generated by Dell through alternative distribution channels, different OEMs, or any other means. The Individual Defendants were aware of this at all times relevant hereto. As detailed below, by the start of fiscal year 2014, Dell had refused to pay its sales representatives to sell CommVault products, and the Company's pipeline of sales opportunities was slowing. By the beginning of the second quarter of 2014, the Company was acknowledging internally that it could not meet its software revenue

[43] *See* CommVault Sys., Inc., Q1 2014 Earnings Conference Call, at 5 (July 30, 2013) (Def. Carolan: "We added 57 net employees in fiscal Q1, and ended the quarter with 1,797 employees. This was below our internal hiring targets and we will roll the Q1 headcount hiring shortfall into Q2's hiring plan."); CommVault Sys., Inc., Q2 2014 Earnings Conference Call, at 10 (Oct. 29, 2013) (Def. Carolan: "We did not hit our hiring plans."); CommVault Sys., Inc., Q3 2014 Earnings Conference Call, at 5 (Jan. 29, 2014) (Def. Carolan: "We added 40 net employees in fiscal Q3 and ended the quarter with 1,936 employees. This was below our internal hiring targets and we will roll the Q3 headcount hiring shortfall into Q4's hiring plan.").

targets due to the loss of business from the Dell partnerships. The Company's sales force suffered attrition and new hires could not replace the productivity of the lost sales people. Of the net employee additions the Company reported during the Class Period (which were significantly lower than the total new hires when accounting for departures of existing sales personnel), Defendants reminded investors that each new salesperson hired would require 12 months to become fully productive.[44]

83. For example, CW3 confirmed that the loss of Dell business contributed to the Company's missed revenue estimates in the fourth quarter of fiscal 2014. CW3 explained that Dell had made a business decision to transition away from CommVault and begin selling its own products. By late 2012, when Dell had acquired both Quest Software and AppAssure, Dell had a complete portfolio of products that could compete with CommVault software. According to CW3, by mid-2013, Dell had told CommVault that it would no longer pay Dell sales representatives to sell CommVault products.

84. CW3 stated that as soon as Dell separated from CommVault in 2013 (after Dell had acquired Quest Software in late 2012), the Company's pipeline of sales opportunities began shrinking. Among other issues, approximately half of CommVault's sales representatives resigned in 2013 as a result of Dell transitioning away from CommVault and their resultant inability to make their sales numbers. CW3 further explained that while CommVault tried to grow organically, it was difficult because Dell had over one thousand sales representatives in the field who were no longer selling CommVault products. According to CW3, CommVault had difficulty trying to build up reseller partners to backfill the Dell revenue stream. In addition, CW3 stated

[44] *See, e.g.*, CommVault Sys., Inc., Q1 2014 Earnings Conference Call, at 6 (July 30, 2013) (Def. Carolan: "Please keep in mind that a typical sales rep takes about a year to become fully productive.").

that CommVault had difficulty targeting new channels of business. For example, if those channels already had Dell computers, CommVault would be unable to penetrate those accounts. Without partnering with Dell, these were the new types of opportunities that CommVault was no longer able to access.

85. CW1, a Director of Strategic Partner Development at CommVault from October 2011 through September 2014 who reported to Dave West, Senior Vice President, Worldwide Marketing & Business Development through March 2014 (when West left the Company), confirmed that Defendants knew (or recklessly disregarded) at the start of fiscal 2014 (April 2013) that Dell had stopped selling CommVault products, and that the loss of Dell business was a serious problem for CommVault.

86. Before working at CommVault, CW1 worked for NetApp for ten years. At that time, NetApp was working with CommVault on writing a software backup recovery solution, and CW1's responsibilities included moving that project forward. Once CW1 joined CommVault, CW1's job responsibilities continued to include developing CommVault's relationship with NetApp. NetApp was a distribution partner that Defendants represented would replace Dell.

87. CW1 stated that by the start of fiscal 2014, Dell had made a number of acquisitions, so Dell told CommVault that it was not going to push CommVault products anymore. According to CW1, by at least the beginning of the second quarter of fiscal 2014, CommVault management was internally acknowledging that the loss of Dell's business was a problem. CW1 explained:

> Dell was over 18 percent of annual revenue. To replace that in the span of six months in terms of pipeline for the fiscal year – in any business, that's going to be almost impossible. Instead of putting a hand up and saying, "Let's readjust the forecast for the year," they obviously went out and decided they were going to start using deferred revenue and try and mask it.

88. According to CW1, in July 2013, Defendants convened a week-long meeting of senior executives, including Defendants Carolan and Hammer, in Itasca, Illinois (near Chicago) to address the dissolution of CommVault's massive OEM agreement with Dell.[45] Specifically, the purpose of the meeting was to address the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in what the Company referred to as its "funnel" to meet its target revenue numbers. As CW1 put it, ***"We kn[e]w, based on the pipeline and losing Dell business, we're way off our numbers for the fiscal year."*** Approximately 20 people attended this meeting from CommVault's sales, operations, and marketing departments, including "all the executive staff," as well as Ron Miiller, Senior Vice President, Worldwide Sales, Dave West's boss, who reported to Defendant Hammer. There were a number of conference calls leading up to the meeting to talk about what to discuss at the meeting, including calls between CW1 and West.

89. CW1 was asked to participate in the meeting because CW1 was involved with the Company's NetApp program, and Defendants wanted to see if they could make up the lost Dell revenue through NetApp. CommVault had an OEM product that was written specifically for NetApp, and this was an area in which the Company was hoping to grow. According to CW1, Defendants' expectations for growth from NetApp were completely unrealistic. For example, the Company was on track to make about $7 million from the NetApp program in a year, and West and Miiller were demanding that CW1 generate $10 million or more from that relationship. CW1 explained to CW1's bosses that achieving this target was impossible, and there was no way that NetApp would replace Dell.

[45] The meeting in Itasca, Illinois was referred to within CommVault as the "Chicago" meeting – and that adoption is used herein.

90. According to CW1, another way that the Company attempted to make up for the lost revenue from Dell was to dramatically raise sales quotas to unrealistic levels throughout the Company. As CW1 put it, this was like "trying to make money drawing blood from a stone." According to CW1, putting all the pressure on the sales force to make up approximately 20 percent of revenue that had previously come from Dell was unrealistic and led to high turnover.

91. CW1 further explained that along with the increased sales quotas that were implemented in response to the loss of Dell revenue, CommVault sales representatives were under pressure to close bigger deals, which also contributed to high turnover. For example, CW1 saw a presentation previously given by West at a CommVault meeting of sales leadership, including Ron Miiller, indicating that there was going to be an expected $2 million sale of CommVault software through NetApp to Telstra, an Australian telecommunications company. However, CW1, who was responsible for the NetApp account, was not told about the deal and saw no evidence that the deal was actually going to happen. To the contrary, using CommVault's customer resource management system (salesforce.com), which tracked sales leads, CW1's contact person in Australia confirmed that there was no record of the deal. CW1 stated that it was suspicious that someone at CommVault's corporate headquarters in New Jersey was proposing a $2 million sale, but the sales person with responsibility for closing that deal would not even know about it.

92. The inclusion of the proposed $2 million Telstra sale in an internal CommVault sales presentation, without any knowledge of the salespeople and other executives responsible for CommVault's relationship with NetApp, indicates that CommVault was going to incredible lengths in an attempt to mask the impact of the loss of the Dell business, both internally and externally. The Company was under extreme duress.

93. CW2 was a Sales Director who did a lot of business with Dell by partnering with it on mid-enterprise accounts. Before joining CommVault in July 2011, CW2 worked for EMC, which also had a relationship with Dell, in back up recovery system sales. CW2 attended the July 2013 week-long meeting in Chicago to address the critical loss of revenue from Dell. CW2 stated that at the July 2013 meeting in Chicago, ***Defendant Hammer stated that for the first time since CommVault started growing at the rate it did, there was a drop-off in business.***

94. CW2 confirmed that the Dell relationship was "huge" for CommVault and led CommVault to many opportunities. CW2 stated that after CommVault transitioned away from Dell in 2013, CommVault was unable to find replacement distribution partners. According to CW2, neither NetApp nor Hitachi compared to the CommVault/Dell solution. Among other issues, Hitachi had a 100% mark up on the products it sold, which was so high that Hitachi could barely close deals. In addition, CW2 explained that Arrow, a partner that Defendants claimed would replace Dell, had no control over what Arrow resold, and would just as soon resell a different company's software rather than CommVault's. Unlike Dell, Arrow was just a wholesale distributor with no outside sales force. As CW2 put it, between Arrow and Dell, ***"You can hardly compare the two, except Dell can occasionally do business the way Arrow does," but not vice versa.*** CW2 further stated that CDW, another partner that Defendants touted as having successfully replaced Dell during the Class Period, did not know how to sell sophisticated products.

95. In sum, CW2 stated that CommVault's attempt to find new business after the transition away from Dell was "ugly" and resulted in a total decline in CommVault's sales. Once Dell sales representatives were told that they were no longer being paid to sell CommVault

products, they had no incentive to make sure CommVault deals closed, and CommVault did not have another channel like Dell to assume those deals.

96. CW2 also described CommVault's attempt to move away from the middle market and expand into the enterprise market as unsuccessful. For example, CommVault created an enterprise sales team without creating a global account manager to manage a global account. Without a global account manager, there was no one within the enterprise sales team who was responsible for the overall number that was driving the account managers. According to CW2, the enterprise account managers failed miserably.

97. CW5, a Regional Manager at CommVault from 2010 until March 2014 who was responsible mainly for CommVault's relationship with Dell, and reported from 2012 until CW5 left the Company to the manager of all of CommVault's OEM relationships, Peter Byrne, Director, North America OEM Sales, who, in turn, reported to Scott Skidmore, Vice President, Americas Channel (December 2010 – present), confirmed that CommVault was unable to replace Dell with other business partners. According to CW5, ***it would have taken years, at a minimum, to generate even close to the percentage of revenue from other partners that had been generated by the Dell partnerships.*** CW5 further explained that none of the other partners that the Company was developing to replace Dell were of a "global scale" like Dell. CW5 also confirmed that sales quotas and high turnover among CommVault's sales force increased as CommVault's relationship with Dell deteriorated.

98. CW6, a CommVault Territory Account Executive in Los Angeles, CA from January 2012 until June 2013 who reported to David Vento, Director of Commercial Sales-West, also confirmed that after Dell acquired competing products, Dell decided to cut its ties with CommVault so as not to compete against itself. Immediately after CommVault announced its

transition away from Dell in the fourth quarter of 2013, CW6 observed and felt the effects in the field. For example, a number of pipelines were changed immediately.

99. CW6 also described how CommVault's attempt to replace Dell with other distribution partners was not successful. For example, CommVault hoped that its relationship with NetApp would take off and fill the void created by Dell, but this relationship never came to fruition. Indeed, CommVault and NetApp had very different interests: the idea behind the CommVault solution was to minimize the storage that customers would have to purchase, so that customers would not need multiple locations for backup recovery, whereas NetApp's goal was to sell more storage to customers. In that sense, CommVault and NetApp were "common enemies," and CommVault was not appealing to NetApp. According to CW6, CommVault also had difficulty growing organically because while CommVault's software was marketed as able to be used on any platform (not just Dell's), clients were not interested in buying a system like CommVault's, which was based solely on back-up data protection and required customers to make broad changes to their data infrastructure.

100. CW7, an Account Manager from August 2012 through February 2014 who reported to David Vento, Director of Sales – Commercial – West (April 2014 – January 2015) and Director of Sales (July 2012 – April 2014), who, in turn, reported to Rick Baumgart, Vice President, Western US Sales (2008 – present), also attributed the Company's inability to meet its revenue growth targets to the loss of Dell as an OEM partner. CW7 explained that Dell had a massive sales force and huge incumbent sales base, as well as a huge customer base. According to CW7, from a server perspective, there are really only three choices: Dell, IBM, and HP. The loss of Dell as a business partner was a "significant loss," and CW7 stated that CommVault had effectively staked

its business on one enterprise – Dell. CW7 further confirmed that CommVault experienced high turnover among the sales force.

101. CW4 also confirmed that the Company was unable to achieve double-digit revenue growth in fiscal 2014 due to the loss of its key partnerships with Dell, as well as problems with other companies, including Hitachi, which CW4 stated had suffered off and on. CW4 further confirmed that the Company kept raising sales quotas for the sales force and that this resulted in high turnover. Moreover, CW4 stated that Defendants Carolan and Hammer would have been aware of these problems because they "ran a tight ship," had grown up together, and remained "very close."

102. CW8, a National Partner Manager from June 2012 through October 2014 who was responsible for developing sales strategies to enable one of CommVault's indirect channel partners, CDW, to generate opportunities with CommVault solutions and who reported to Scott Skidmore, Vice President, Americas Channels (December 2010 – present), confirmed that by at least the first quarter of fiscal 2014, CommVault senior executives – including Ron Miiller, Senior Vice President, Worldwide Sales since April 2011; Pete Kobs, Vice President of Global Accounts since November 2010; and Scott Skidmore – had learned that Dell was not going to compensate its salespersons for sales of CommVault products anymore. According to CW8, this decision was made entirely by Dell and "CommVault didn't have a say in the situation." CW8 confirmed that in response to Dell's decision, the Company unrealistically increased sales quotas across the Company to "make up the business" from CommVault's Dell partnerships. According to CW8, quotas for CW8's team were increased, but there were no deals in the pipeline. As CW8 put it, "They increased the quota but … [w]e didn't have any deals." This practice led to high turnover among the sales force. Defendants disclosed that new sales personnel required, on average, 12

months to become fully productive, as described above in ¶82 and n.44, but disclosed only net, not total, new hires.

103. CW8 further confirmed that the Company's effort to replace Dell with other business partners was not successful. According to CW8, there were simply "not a lot of new partners."

104. In sum, contrary to Defendants' assurances to investors, Defendants did not and were not able to replace the revenue generated by Dell through other business partners or alternative distribution channels. This created a software revenue slowdown, which left Defendants unable to meet the $1 billion revenue growth target (based on 20% year-over-year software revenue growth) through the generation of software licensing revenue in the absence of the accounting violations discussed herein. As CW1 stated, ***"We kn[e]w, based on the pipeline and losing Dell business, we're way off our numbers for the fiscal year."*** Indeed, CW2 confirmed that due to the loss of the Dell partnerships, there was a drop-off in business for the first time since CommVault began growing at the rate it did.

D. CommVault Improperly Defers Revenue Recognition to Hide the Slowing of Revenue Growth, While Falsely Denying That Deferred Software Revenue Is Contributing to the Appearance of Growth

105. By the fourth quarter of fiscal 2013, Defendants knew (or recklessly disregarded) that they could not replace the loss of revenue from the Dell partnerships through other legitimate means. In that same quarter, Defendants reported historic 23% year-over-year growth in software revenues, as detailed above. Given the substantial software revenue "surplus" in the fourth quarter, and the anticipated upcoming shortfall in software revenue growth, Defendants improperly manipulated their financial results by accruing a massive, unprecedented increase in deferred software revenue.

106. For the first, second, and third quarters of fiscal 2014, analysts predicted that CommVault could achieve reported software revenue of approximately $63.5 million to $77 million and 20% software revenue growth, as reflected in the chart below. Instead of disclosing to the investing public that due to the loss of its partnerships with Dell, the Company was unable to meet its software revenue growth targets in fiscal 2014, Defendants created a "cookie jar" of deferred software licensing revenue that they then used to report 20% year-over-year software revenue growth in the second and third quarters of fiscal 2014. Indeed, during the Company's earnings conference calls throughout the Class Period, Defendants stated that the Wall Street consensus estimates for revenue growth were reasonable.[46] As detailed in the chart below, Defendants could not have achieved 20% year-over-year software revenue growth or met analysts' expectations for the second and third quarters of 2014 if they had not improperly manipulated CommVault's financial results by recognizing over $4 million of previously, improperly deferred software revenue in each quarter:

[46] *See, e.g.*, CommVault Sys., Inc., Q1 2014 Earnings Conference Call, at 4 (July 30, 2013) (Def. Hammer: "Where there could be upside to the full FY 2014 street consensus revenue growth rates …, we believe they are reasonable …"); *id.* at 9 (Def. Hammer: "street current consensus […] we consider as reasonable …. Could we do better than that, yes …."); CommVault Sys., Inc., Q2 2014 Earnings Conference Call, at 3 (Oct. 29, 2013) (Def. Hammer: "We believe the current FY 2014 Street consensus growth rates for total revenue is [sic] reasonable.").

Reporting Period	Total Deferred Software Revenue on the Balance Sheet	Total Software Revenue	Year-over-Year Software Revenue Growth	Range of Analyst Estimates for Software Revenue
Q4 2013 (ended Mar. 31, 2013)	$9,193,000	$72,100,000	up 23%	$66,000,000[47] to $71,100,000[48]
Q1 2014 (ended June 30, 2013)	$9,176,000	$65,300,000	up 20%	$63,500,000[49] to $66,000,000[50]
Q2 2014 (ended Sept. 30, 2013)	$4,700,000	$70,800,000	up 20%	$69,600,000[51] to $70,471,000[52]
Q3 2014 (ended Dec. 31, 2013)	$603,000	$79,200,000	up 20%	$73,000,000[53] to $77,032,000[54]

[47] Jason Ader, "Expect Strong Fiscal Fourth Quarter Results Large Momentum Continues," William Blair Analyst Report, Apr. 17, 2013, p. 3.

[48] Greg McDowell, Patrick Walravens, "Enterprises Deals Drive Solid Results," JMP Securities Analyst Report, Feb. 4, 2013, p. 4.

[49] Robert Breza, Matthew Hedberg, "First Quarter Earnings Preview," RBC Capital Mkts. Analyst Report, July 29, 2013, p. 4.

[50] Andrew J. Nowinski, "FQ1 Preview – Survey Results Point Toward in Line Quarter," PiperJaffray Analyst Report, July 29, 2013, p. 6.

[51] Andrew J. Nowinski, "FQ2 Preview – Channel Checks Suggest Another Strong Quarter," PiperJaffray Analyst Report, Oct. 21, 2013, p. 6.

[52] Eric Martinuzzi, "Raising Target to $93 Q1 Better Than We Expected Despite Early Innings of Simpana 10 Roll-Out," Lake Street Capital Mkts. Analyst Report, July 30, 2013, p. 3.

[53] Andrew J. Nowinski, "Weakness Overdone Reiterate Overweight," PiperJaffray Analyst Report, Dec. 17, 2013, p. 6.

[54] Eric Martinuzzi, "Lumpy Billings Offers Good Entry Point Reiterate BUY," Lake Street Capital Mkts. Analyst Report, Oct. 29, 2013, p.3.

107. By improperly deferring recognition of the software revenue that was realized or realizable and earned in prior periods, Defendants were able to mask the fact that software revenue growth was actually decelerating throughout fiscal 2014. When Defendants' "cookie jar" of deferred software revenue ran out in the fourth quarter of fiscal 2014, the Company was forced to disclose the truth to investors, as detailed below.

1. Defendants Create a Software Revenue "Cookie Jar" in the Fourth Quarter of Fiscal 2013

108. On May 7, 2013, before the start of the trading day, the Company announced its fourth quarter and fiscal 2013 financial results, in which it reported "record quarterly revenues." In the Form 8-K, the Company announced that it had achieved fourth-quarter software revenue of $72.1 million, which substantially exceeded analysts' estimates of $66 million to $71.1 million, and reflected 23% year-over-year software revenue growth, as set-forth in the chart at ¶106 above. The Company further announced that it had achieved 25% year-over-year software revenue growth for fiscal 2013. Even after reporting this historic level of growth, the Company had additional software revenue left over, which Defendants elected, improperly, to "bank" in a "cookie jar," and save for a rainy day. As discussed above and detailed further below, Defendants knew (or recklessly disregarded) that rainy day was coming due to the loss of their partnerships with Dell, which had historically contributed 20% to CommVault's total revenue.

109. The fourth quarter of fiscal 2013 was so successful that the Company was able to defer over $6 million in software revenue that quarter, while at the same time not appearing to take into revenue any of the $3.1 million of deferred software revenue previously recorded on the balance sheet, as of the end of the third quarter of fiscal 2013. This resulted in a total deferred software revenue balance of nearly ***$9.2 million***. This was the highest level of deferred software revenue recorded by the Company since CommVault's IPO in 2006. Both the increase and balance

were extraordinary and unprecedented. The $6 million increase in the fourth quarter of 2013 was over $4.6 million greater than the next-greatest historical increase; the $9.2 million balance was over $5.4 million greater than the previous high balance. Tellingly, the Company provided no explanation regarding the nature of the software sales from which this revenue arose. Indeed, the fourth quarter of 2013, when Defendants created their "cookie jar," and the second and third quarters of 2014, when Defendants recognized the previously deferred software revenue that they had "banked" at the end of 2013, were completely inconsistent with the Company's prior booking and recognition of deferred software revenue, as reflected in the chart below:

Reporting Period	Deferred Software Revenue	Amount of Change from Prior Quarter[55]
FY 2009		
Q1 2009 (6/30/08)	$166,000[56]	$138,000[57]
Q2 2009 (9/30/08)	$161,000[58]	-$5,000
Q3 2009 (12/31/08)	$126,000[59]	-$35,000
Q4 2009 (3/31/09)	$49,000[60]	-$77,000
FY 2010		
Q1 2010 (6/30/09)	$176,000[61]	$127,000
Q2 2010 (9/30/09)	$120,000[62]	-$56,000
Q3 2010 (12/31/09)	$197,000[63]	$77,000
Q4 2010 (3/31/10)	$578,000[64]	$381,000
FY 2011		

[55] Calculated.

[56] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Aug. 6, 2008).

[57] Deferred Software Revenue for Q4 2008 was $304,000. *See* CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Aug. 6, 2008).

[58] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Nov. 3, 2008).

[59] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Feb. 6, 2009).

[60] CommVault Sys., Inc., Annual Report (Form 10-K), at 61 (May 19, 2009).

[61] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Aug. 6, 2009).

[62] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Oct. 30, 2009).

[63] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Feb. 5, 2010).

[64] CommVault Sys., Inc., Annual Report (Form 10-K), at 58 (May 18, 2010).

Reporting Period	Deferred Software Revenue	Amount of Change from Prior Quarter[55]
Q1 2011 (6/30/10)	$722,000[65]	$144,000
Q2 2011 (9/30/10)	$533,000[66]	-$189,000
Q3 2011 (12/31/10)	$377,000[67]	-$156,000
Q4 2011 (3/31/11)	$237,000[68]	-$140,000
FY 2012		
Q1 2012 (6/30/11)	$1,844,000[69]	$1,607,000
Q2 2012 (9/30/11)	$2,599,000[70]	$755,000
Q3 2012 (12/31/11)	$1,443,000[71]	-$1,156,000
Q4 2012 (3/31/12)	$3,764,000[72]	$2,321,000
FY 2013		
Q1 2013 (6/30/12)	$826,000[73]	-$2,938,000
Q2 2013 (9/30/12)	$1,680,000[74]	$854,000
Q3 2013 (12/31/12)	$3,134,000[75]	$1,454,000
Q4 2013 (3/31/13)	$9,193,000[76]	$6,059,000
FY 2014		
Q1 2014 (6/30/13)	$9,176,000[77]	-$17,000
Q2 2014 (9/30/13)	$4,700,000[78]	-$4,476,000
Q3 2014 (12/31/13)	$603,000[79]	-$4,097,000

[65] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Aug. 5, 2010).

[66] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Nov. 4, 2010).

[67] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Feb. 3, 2011).

[68] CommVault Sys., Inc., Annual Report (Form 10-K), at 58 (May 17, 2011).

[69] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Aug. 4, 2011).

[70] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Nov. 3, 2011).

[71] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 9 (Feb. 3, 2012).

[72] CommVault Sys., Inc., Annual Report (Form 10-K), at 66 (May 15, 2012).

[73] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 10 (Aug. 2, 2012).

[74] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 10 (Nov. 1, 2012).

[75] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 10 (Feb. 1, 2013).

[76] CommVault Sys., Inc., Annual Report (Form 10-K), at 70 (May 14, 2013).

[77] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Aug. 1, 2013).

[78] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Oct. 31, 2013).

[79] CommVault Sys., Inc., Quarterly Report (Form 10-Q), at 8 (Jan. 31, 2014).

Reporting Period	Deferred Software Revenue	Amount of Change from Prior Quarter[55]
Q4 2014 (3/31/14)	$666,000[80]	$63,000

110. As the chart in ¶109 above reflects, the increase in deferred software revenue in the fourth quarter of 2013 was nearly three times greater than any other increase in the previous five fiscal years, and the accruals that depleted the "cookie jar" in the second and third quarters of 2014 were approximately twice as big as any accruals in the previous five fiscal years.

111. Devor commented further on why the anomalous increases and decreases are particularly noteworthy:

> [A]s a result of Defendants' shift of sizable amounts into actual revenue during the second and third quarters of 2014, the deferred software revenue liability balance did not remain stable, as if new transactions, with new amounts of deferred software revenue, were occurring. Therefore, the fact that additional deferred software revenue was apparently not recorded in the first, second, or third quarters of 2014 makes the build-up and the ensuing take-down of the balance all the more notable. Instead, once the large takedowns occurred in the second and third quarter of 2014, the balance had nearly dissipated. After the reduction of the liability and the recording of revenue in the second and third quarters of 2014, the balance of deferred software revenue had decreased to approximately $600,000.

Devor Decl. ¶31.

112. In sum, at least a material portion, if not all, of the $9.2 million in software revenue was realized or realizable and earned in the fourth quarter of fiscal 2013. Accordingly, under the applicable accounting guidance, CommVault was required to recognize a material portion of the $9.2 million as revenue. The Company did not do so. Rather, as detailed below, multiple CWs confirmed that Defendants improperly deferred the timely recognition of software revenue to make it appear that the Company's software revenue had continued to grow as fast as expected, when in actuality, growth was decelerating. For example, CW1 confirmed that ***"CommVault was***

[80] CommVault Sys., Inc., Annual Report (Form 10-K), at 60 (May 2, 2014).

skimming revenue off deferred revenue just to make the numbers look good." CW4 similarly confirmed that ***when the Company had enough revenue for the current quarter, it would roll some over to the next quarter so that the next quarter would look good.***

113. Numerous CWs similarly confirmed that due to the loss of business from CommVault's partnerships with Dell, the sales simply were not there to justify the numbers CommVault was reporting. Indeed, among other problems, the Company experienced high turnover and attrition in its sales force, with nearly half of its sales force resigning after the relationships with Dell broke down, leaving no representatives to make the sales in the field that the Company needed to achieve its software revenue growth targets.

114. By improperly recording millions of dollars as a "deferred revenue" liability, and then recognizing such amounts selectively into income during the second and third quarters of fiscal 2014, Defendants misled investors concerning CommVault's true financial condition and were able to mask the fact that software revenue growth had in fact decelerated due primarily to the loss of CommVault's partnerships with Dell, as detailed below.

2. Defendants Mask Software Revenue Deceleration in the Second Quarter of Fiscal 2014

115. On October 29, 2013, the Company issued a press release announcing its financial results for the second fiscal 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 software revenue growth of 20%. The Company's quarterly financial results were manipulated and buttressed by the recognition of approximately $4.5 million of the approximately $9.2 million of deferred revenue from software sales that the Company had deferred at the start of the fiscal year, as reflected in the chart in ¶109 above.

116. Notably, the Company exceeded analysts' overall revenue expectations for the second quarter of fiscal 2014 by $2 million,[81] and exceeded analysts' software revenue expectations for the quarter by approximately $1 million, as reflected in the chart at ¶106 above. (As noted above at ¶106 and n.46, Defendants had confirmed and adopted the analysts' revenue estimates.) As a result, if CommVault had not recognized $4.5 million of deferred software licensing revenue, the Company would have had year-over-year software revenue growth of only 12%, would not have achieved the critical 20% year-over-year software revenue growth rate, and would have missed its revenue estimates for the quarter. Even after the recognition of nearly $4.5 million of deferred software licensing revenue, the balance of CommVault's deferred revenue liability from software sales remained historically high at $4.7 million.

117. During the Company's October 29, 2013 earnings conference call for the second quarter of fiscal 2014, analysts specifically questioned whether the Company's recognition of previously deferred software licensing revenue indicated that software revenue growth was slowing. For example, analyst Michael Turits from Raymond James & Associates asked Defendant Carolan:

> On the deferred, it sounds like it is pretty lumpy and obviously had the fall off this quarter in the license fees. But as we calculated billings or bookings, they were below the rate of revenue growth this time. Typically they have been about the same. So, given the lumpiness, does that make sense Brian [Carolan], to think that rate starts to head back up towards your revenue growth rate?

In response, Defendant Carolan dismissed the analyst's concerns, stating, ***"I wouldn't read into the quarterly swings…."***

[81] Robert Breeza, "Opportunity and Strategy Will Require Execution," RBC Capital Mkts. Analyst Report, Oct. 29, 2013.

118. On the same call, Joel Fishbein, an analyst from Lazard Capital Markets, similarly asked, "How meaningful is [the deferred revenue number] as a metric?" In response, Defendant Carolan stated, "Software will fluctuate from quarter to quarter depending on the timing of recognition and very large perpetual deals." Defendant Carolan then emphasized that software aside, "the totality of deferred revenue was up 24% year-over-year, which is ***fairly strong growth*** …." Defendant Hammer added, ***"The combination of visibility and funnel has also improved on a relative basis. So the way I would read into that is, our business momentum has clearly increased …."***[82]

119. Analysts responded positively to these assurances. For example, in an October 29, 2013 report entitled *Lumpy Billings Offers Good Entry Point. Reiterate BUY, $93 Target*, analysts at Lake Street Capital Markets stated 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 Defendant Hammer's representations that the combination of visibility and funnel "ma[d]e[] [the Company] comfortable."

120. Similarly, in a report dated October 29, 2013 entitled *Solid FQ2 (Sep) Results; Visibility and Deal Pipeline Improving. OW, $96 PT*, analysts at Piper Jaffray stated:

> Excluding the deferred component, software revenue increased 10.1%, which is a deceleration from the prior quarter. However, management noted that this was entirely due to the timing of the recognition of deals in the quarter and this growth should bounce back in FQ3 (Dec). ***Moreover, deferred revenue does NOT equal***

[82] Defendants use the term "visibility" to refer to "orders in hand" that have not yet met the GAAP criteria for revenue recognition. *See* CommVault Sys., Inc., Goldman Sachs Tech. & Internet Conference, at 8 (Feb. 12, 2014) (Def. Carolan); *see also* CommVault Sys., Inc., Q3 2014 Earnings Conference Call, at 15 (Jan. 29, 2014) (Def. Hammer: "What visibility is are deals that we've shipped software or we have orders for or we can see that they're going to ship early in the quarter, but we haven't gotten paid or they just don't meet our revenue recognition guidelines."). Defendants use the term "funnel" to refer to CommVault's "total [business] opportunities for the quarter." *Id*.

> ***visibility and we would remind investors that management specifically stated that visibility is improving, with FQ3 off to a good start.***

121. In truth, as detailed above, multiple CWs confirmed that by the beginning of the Class Period, Defendants knew (or recklessly disregarded) that they would not be able to sustain software revenue growth due to the loss of their partnerships with Dell. For example, according to CW1, during the July 2013 meeting in Chicago attended by Defendants Hammer and Carolan, as well as all of the executive staff, Defendants acknowledged that the Company was so far behind, in terms of generating a funnel of opportunity, that this was a big problem. As CW1 put it, "That whole week-long meeting was about how can we fill the funnel to replace the revenue" previously generated from Dell. CW1 stated, "We kn[e]w, based on the pipeline and losing Dell business, we're way off our numbers for the fiscal year." CW2 similarly confirmed that at the July 2013 meeting, Defendant Hammer announced that for the first time since CommVault started growing at the rate it did, there was a drop-off in business.

122. Within a couple of weeks of the July 2013 meeting in Chicago, CW1 met in Las Vegas with a former colleague, who had just recently left his position as Worldwide OEM Marketing Director at CommVault. At this meeting, CommVault's former Worldwide OEM Marketing Director told CW1 that the Company was recognizing deferred revenue to mask slowing revenue growth.

123. According to CW1, the revenue scheme began in fiscal year 2014. CW1 stated, ***"CommVault was skimming revenue off deferred revenue just to make the numbers look good."*** Defendants engaged in this practice because they were so far behind in their funnel of business opportunities. CW1 explained that the funnel is what CommVault used to "get a sense of what you're going to turn into business. At the end of the day, if the funnel isn't big enough to close those deals, you know you're not going to hit your numbers." CW1 was "told by a number of

people [at CommVault] that ***this practice was happening, and that's why the numbers continued to look good even though we were losing revenue from Dell."*** According to CW1, "most people [at CommVault] knew what was going on," and the deferred revenue scheme was common knowledge at CommVault's corporate headquarters in New Jersey.

124. As a shareholder and employee, CW1 believed as an ethical matter that the Company's deferred revenue skimming practice was wrong. CW1 asked questions regarding the practice internally. CW1 stated, "I was shocked when I found out what was going on. I had conversations with management where I said, 'I am not okay with this.'" CW1 brought CW1's concerns to CW1's boss, Dave West, who had been at CommVault since before the IPO, and who had served as Senior Vice President, Worldwide Marketing & Business Development since May 2011. West reported to Ron Miiller, Senior Vice President, Worldwide Sales, who, in turn, reported to Defendant Hammer. CW1 was subsequently laid off because CW1 had raised questions and concerns, despite having driven 400% year-over-year growth during CW1's three years at CommVault. CW1 confirmed, "because people were asking questions, they got laid off."

125. Dave West also retired effective March 31, 2014 under suspicious circumstances.[83] *See* CommVault Sys., Inc., Current Report (Form 8-K) (Feb. 3, 2014). CW1, CW4, and CW9, a Lead Management Specialist in CommVault's Oceanport, New Jersey headquarters from April 2012 until August 2014 who reported to Telemarketing Manager, Marie DiPaolo, who, in turn, reported to Senior Director of Corporate Marketing, Dawn Colossi, who, in turn, reported to Dave West, confirmed that West's resignation was unexpected, given that West was well-liked within the Company. CW9 subsequently heard that West had been forced out of the Company.

[83] CommVault Sys., Inc., Current Report (Form 8-K) (Feb. 3, 2014).

126. CW4 confirmed that the Company was recognizing deferred software licensing revenue as a way to conceal revenue growth deceleration. According to CW4, ***when the Company had enough revenue for the current quarter, it would roll some over to the next quarter so that the next quarter would look good.*** CW4 understood that ***the Company was holding the revenues because it had to report its revenue to Wall Street.*** CW4 knew about this practice because CW4's commissions were deferred, and also because CW4 heard about the deferred revenue scheme from CW4's direct superior, CW3, as well as CW3's boss. Indeed, according to CW4, "A lot of the team was talking about it."

127. CW2 further confirmed that "everyone in CommVault Americas" knew by the first quarter of fiscal 2014 that CommVault was not going to hit its revenue numbers. However, CommVault "magically" and "miraculously" made its numbers three quarters in a row. CW2 explained that the sales were not there to justify the numbers that CommVault was reporting. For example, CW2's Western Division's numbers were off by 60%, which should have dragged the reported numbers down. CW2 and other CommVault Sales Directors, who listened to CommVault's earnings conference calls during the Class Period, would "shake their heads" at what Defendant Hammer was stating on those calls. According to CW2, the numbers CommVault reported to Wall Street and investors were not consistent with the Company's actual revenue numbers. Moreover, CW2 stated that Defendant Hammer's attribution of the Company's inability to meet its fourth quarter fiscal 2014 revenue estimates to execution issues was "a big ruse, a big cover-up."

128. CW10, a Federal Enterprise Account Executive, Special Programs, from April 2012 until December 2013 who reported to Pat Sheridan, who, in turn, reported to Matt Galligan, Vice President Federal (April 2011 – December 2013), confirmed that CommVault was focused

on meeting its revenue numbers at any cost, and that the Company's representations concerning revenue growth were not supported by the experience of CW10's team in the field. According to CW10, CommVault was the "most focused on the numbers and most high-pressure-to-close business organization of any company I've ever seen," and this pressure came from the CEO, Defendant Hammer, on down. CW10 stated, "They were always so heads-down, focused on numbers and looking good for Wall Street, it seemed. ***They did whatever possible to make it look like we were growing quarter-over-quarter.*** …"

129. The Company's statements concerning revenue growth made CW10 and CW10's team "scratch [their] heads." CW10 explained that CW10 would "hear they'd be experiencing these big growth numbers" when only "20% of [CW10's] team even met quota th[at] quarter." CW10 stated that the Company engaged in improper accounting practices, and "there were some things going on ethically" that troubled CW10. For example, employees on the federal team were being encouraged to book orders from partners before the orders were actually placed, or "pre-booking orders," which CW10 described as unethical.

130. CW8, who was responsible for managing one of CommVault's indirect channel partners, CDW, similarly confirmed that unethical accounting practices occurred at CommVault. According to CW8, there was a suspicious deal in the federal sales group that was not properly reconciled. The deal should have been booked in the fourth quarter of fiscal 2013, but was not booked until the first quarter of fiscal 2014. As a result, there were several people who did not get paid the commissions they should have, including one National Account Manager who left the Company as a result.

3. Defendants Partially Disclose the Truth About Decelerating Software Revenue Growth in the Third Quarter of Fiscal 2014

131. On January 29, 2014, the Company issued a press release announcing its financial results for its third fiscal quarter ended December 31, 2013. In the press release, which was also filed with the SEC on Form 8-K, the Company again reported quarterly year-over-year software revenue growth of 20%. The Company's quarterly financial results were again supported by a significant portion of deferred software licensing revenue. Specifically, during the quarter, CommVault recognized approximately $4.1 million in deferred revenue from software licensing, leaving the Company with a mere $600,000 in its deferred software licensing revenue liability account, as reflected in the chart in ¶109 above.

132. Significantly, without the recognition of deferred software licensing revenue, CommVault's quarterly year-over-year software revenue growth would have been approximately 14%, well under the 20% year-over-year software revenue growth rate necessary to achieve the $1 billion revenue goal.[84] Indeed, as discussed above, in the same quarter, total revenues from CommVault's Dell partnerships were down 28% year-over-year and 38% sequentially, leaving the Company with a gap that Defendants filled by recognizing a substantial portion of the deferred software revenue from their "cookie jar."

133. Following the Company's disclosures that Dell revenue had significantly decreased ***for the first time*** and that the Company had again recognized ***over $4 million in deferred software revenue***, 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 software revenue

[84] *See* Jason Ader, "Deferred Revenue Fears Overblown, in Our View; Maintain Confidence in Software Revenue Growth and Outperformance," William Blair Analyst Report, Jan. 29, 2014.

growth was decelerating, and that CommVault would not be able to replace the revenue previously generated through its Dell partnerships with other sources.

134. Despite investors' concerns over what could have been decelerating software revenue growth, the Company insisted that shrinking deferred software licensing revenues were not an indicator of the Company's growth trajectory. For example, during the Company's January 29, 2014 earnings conference call for the third quarter of fiscal 2014, analyst Joel Fishbein from BMO Capital Markets asked:

> Number one, stock's down in the pre-market based on what the perception around deferred revenue being weak. I know it's a little bit redundant. Can you just go through the deferred revenue and talk about the break out between maintenance and product and if there were any changes in the product deferred, any meaningful movement there and then just what the maintenance deferreds were?

135. In response, Defendant Carolan provided emphatic assurances that a shrinking deferred software revenue balance was not indicative of decelerating software revenue growth, stating: "That [deferred revenue] will fluctuate a bit quarter to quarter, but we feel that ***it's not a good indicator of our licensed revenue growth,*** which was up 20% year over year …."

136. Also during the January 29, 2014 earnings conference call, analyst Jason Ader from William Blair & Company indicated that there was a link between the Company's recognition of deferred software revenue and its software revenue growth, stating, "Bob [Hammer], just on the software revenue for the March quarter, you've had a couple of quarters now where you've been able to take some things off the balance sheet, which has allowed you to grow very nicely." In response, Defendant Hammer represented that there was simply no connection between the Company's recognition of deferred revenue and its software revenue growth, stating:

> ***That is not true.*** Let's be really clear. ***In Q3, that revenue did not come off the balance sheet. The revenue was due to, on software revenue, was due to pure license revenue growth***. That is the misconception out there. Total revenue, yes, it

> impacts total revenue, but ***it does not impact or did not impact in Q3, our software revenue significantly.***
>
> ***
>
> I'll let Brian [Carolan] take this from here, but to be really clear, we had extremely strong license revenue growth based on million dollar deals. They were at a record and it drove our results. That's what you've got to focus on. ***You guys are all twisted on up on deferred, but I think you're just overstating the impact of deferred to what's driving the growth of this Company***.

137. Defendant Hammer further assured investors that the Company's "visibility" and "funnels" remained strong and that investors should be focused on CommVault's strong visibility and funnels, and not on its diminished deferred software revenue, as a measure of software licensing revenue growth. Defendant Hammer stated that due to "higher visibility" and "higher" "funnel" going into the fourth quarter of fiscal 2014, "***impact to our software revenue growth from deferred is small and getting smaller.***"

138. In response to another analyst's question seeking to confirm that deferred software revenue had in fact decreased by $4.1 million, Defendant Hammer again urged investors not to focus on deferred software revenue as a measure of software revenue growth:

> Let me clarify something. That is correct. It's where the math is, but 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.***

139. Defendant Hammer further represented in response to the same analyst that Defendants rigorously followed accounting rules and guidance concerning the timing of revenue recognition, stating: "we're very strict on how we – and as soon as it is revenue, it becomes revenue. ***We have a very rigorous consistent revenue recognition checklist here.***"

140. As discussed above, in the same quarter, Defendants reported a significant decline in Dell revenue of 28% year-over-year and 38% sequentially, with sales through CommVault's

Dell partnerships constituting a mere 11% of CommVault's total revenue for the quarter, about half of its historical 20%. Notwithstanding this decline, Defendant Hammer assured investors during the January 29, 2014 conference call, ***"We continue to meet our stated objectives in transitioning away from Dell to other distribution partners."***

141. During the same call, analyst Aaron Rakers from Stifel Nicolaus questioned the impact of the loss of revenue from Dell on CommVault's deferred revenue balance:

> As a follow-up to the deferred revenue discussion, I know that you had mentioned, obviously, a sharp falloff in the Dell relationship and you also alluded to that majority being driven by the maintenance stream of that relationship. Has that or should we expect that to continue or will that weigh on the deferred revenue balance as we go forward? Or rather, are you able to replenish that maintenance stream into that deferred revenue line?

In response, Defendant Carolan reiterated, ***"No, it won't have an impact. Any kind of falloff in Dell revenue … will just be replaced through alternative distribution channels."***

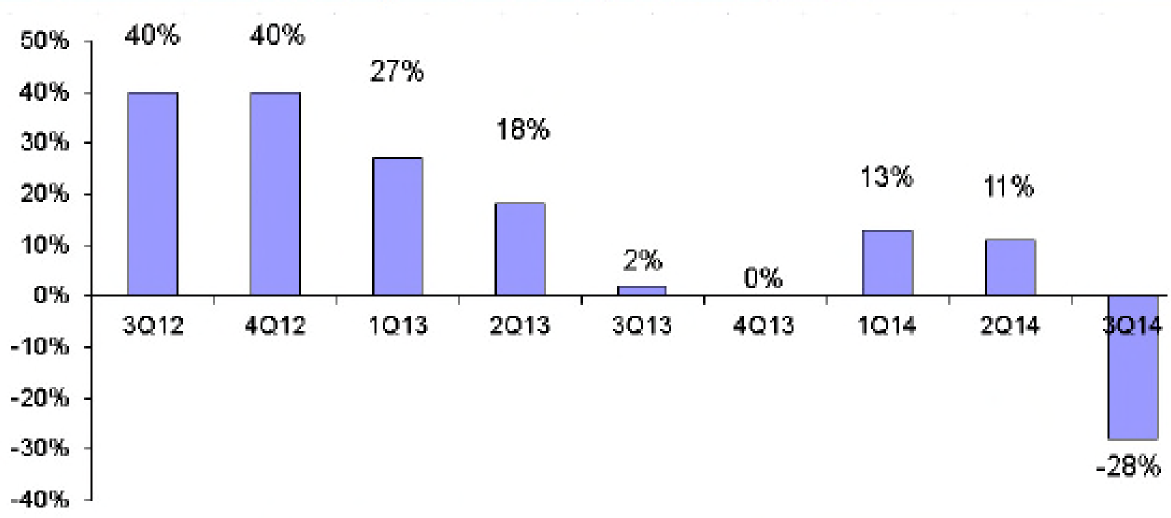
142. While analysts were concerned with the Company's shrinking deferred software revenue and its impact on software revenue growth, as well as the significant decline in revenue from Dell, they also accepted Defendants' assurances. For example, on January 29, 2014, William Blair issued a report entitled, *Deferred Revenue Fears Overblown, in Our View; Maintain Confidence in Software Revenue Growth and Outperformance.* William Blair acknowledged "investor fears about software revenue deceleration," and the impact of deferred software revenue recognition on the Company's quarterly revenue and earnings, noting that 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, "Excluding 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. William Blair further 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."

143. Similarly, on January 29, 2014, in an analyst report entitled *Moving, But a Few Hidden Parts to F3Q*, Jefferies observed the impact of deferred software revenue on the Company's growth, noting, "a drawdown in deferred software muted overall growth … Management downplayed the relevancy of deferred license due to timing and total deal activity but the $9mn YTD drawdown, increase in linearity, and go-to-market changes heighten the execution concerns."

144. The market also reacted negatively to the Company's disclosure concerning the decline in revenue from Dell. For example, in an analyst report entitled, *Earnings Beat, but Misses Deferred Revenue and Dell Contribution Down 28%*, dated January 29, 2014, JMP Securities compiled the chart below, illustrating that "in 3Q revenue from Dell decreased drastically and was down 28% yoy (and down 38% sequentially). ***We believe this drastic reduction has spooked investors ….***"

FIGURE 2. Dell Relationship: YOY Growth, Last Nine Quarters



Source: JMP Securities LLC and Company Filings

145. William Blair similarly noted "a ***steep decline*** in revenue through Dell (down 38% sequentially)" in its January 29, 2014 report called *Deferred Revenue Fears Overblown, in Our View; Maintain Confidence in Software Revenue Growth and Outperformance*.

146. Nonetheless, the market took comfort in the Defendants' positive reassurances. For example, in its January 29, 2014 report, William Blair reiterated its "Outperform" rating, stating, "We continue to believe that CommVault's guidance generally leaves ample room for upside given the company's momentum and history of outperformance." Moreover, William Blair observed that deferred revenue "will fluctuate from quarter-to-quarter, but ***it is not deemed to be a good indicator of license revenue growth by management.***"

147. Similarly, in an analyst report dated January 29, 2014, entitled *Q3 Lumpy Billings Offers Good Entry Point; Reiterate BUY, $93 Target*, Lake Street Capital Markets reiterated its "BUY" rating, stating, "The company is executing well and the 20% y/y growth rate says it is likely to continue taking share from incumbents." Lake Street Capital Markets further noted with respect to Dell that "[i]n Q3 the company saw its Dell business start to tail off," but concluded, "Arrow Steps in Nicely For Dell."

148. Macquarie (USA) Equities Research likewise concluded in a report entitled *Giving the Benefit of the Doubt*, dated January 29, 2014, that without the Company's $4.1 million in deferred revenue, "software revenue growth would have been a more pedestrian 14% y/y instead of the reported 20.2% y/y" and "Dell's contribution to CVLT's revenue declined to 11% from 20% in the prior six months." Nonetheless, Macquarie analysts stated, "We are encouraged by management's commentary around improving visibility … [and] ***we are inclined to believe that CVLT can revive its growth momentum in 4Q FY14.***"

4. Defendants Continue to Insist That Deferred Software Revenue Is a Meaningless Indicator of Growth Throughout the Fourth Quarter of Fiscal 2014

149. Defendants continued to deny the impact of the Company's declining deferred software revenue balance on CommVault's software revenue growth for the remainder of the Class Period. For example, two weeks after the January 29, 2014 call, on February 11, 2014, the Company presented at the Stifel Nicolaus Technology, Internet & Media Conference. During this conference, Defendants again assured investors that deferred software revenue was not an indicator of growth, and urged investors to focus on "visibility" instead of deferred revenue. For example, in response to Stifel Nicolaus analyst Aaron Rakers' request that Defendants "touch on just reminding people where we stand on the deferred discussion and to put it out there, and then how we kind of think about what you look at in terms of the visibility," Defendant Carolan represented:

> As we stated on the [January 29, 2014 earnings conference] call, we look at not only what's sitting on balance sheet, but what's sitting off balance sheet in terms of what we call visibility. These are orders that have not met the GAAP requirements for being put on the balance sheet, something that we track internally. Bob [Hammer] did make the statements and we all stand behind it is that our visibility actually increased at the end of the December quarter in comparison to our September quarter. So we actually felt like the business had ***good momentum*** leaving the quarter. We felt that ***things were accelerating, not decelerating in relative terms.***

E. The Truth Is Revealed

150. It was not until before the opening of the market on April 25, 2014 that investors learned the truth about CommVault's decelerating software revenue growth and how the loss of its Dell partnerships was a direct cause of the deceleration. On that day, before trading opened, the Company announced that its fiscal fourth quarter profit had declined 7.8% compared with the same period of the prior year due to significant deceleration in growth. Notably, CommVault's April 25, 2014 press release stated that "[s]oftware revenue in the fourth quarter of fiscal 2014 was

$79.0 million, an increase of 10% year-over-year and flat sequentially," revealing that software revenue growth decelerated to just 10% year-over-year, half of the 20% software revenue growth investors had been led to expect. Despite the Company's insistence that deferred software revenue was a meaningless indicator of growth, without the recognition of deferred software licensing revenue, the Company could no longer conceal the growth deceleration that it had been steadily experiencing due to the loss of its partnerships with Dell.

151. On an April 25, 2014 conference call to discuss CommVault's announcement, Defendant Hammer confirmed that "lower than forecast results in the Americas . . . negatively impacted our license revenue growth for the quarter." Defendant Hammer further confirmed that, contrary to Defendants' prior representations that the move away from Dell would not affect CommVault's software revenue, ***"the additional effort it took to move away from Dell" contributed to the Company's declining revenue growth in the Americas,*** and constituted "a distraction in the Americas." Defendant Hammer acknowledged that the move away from Dell "negatively impacted the Americas in the near term."

152. The market reacted to these disclosures with surprise and disappointment. The price of CommVault stock immediately declined, falling from $68.58 per share at close on April 24, 2014, to $47.56 per share at close on April 25, 2014, or over 30%, and wiping out nearly $1 billion of market value.

153. Moreover, several analysts downgraded or drastically lowered their target price for CommVault stock. For example, in a report entitled *FY15 A Rebuilding Year With Investment In Sales Infrastructure, Lowering Target To $62,* dated April 25, 2014, analysts at Lake Street Capital Markets lowered their price target by over 33%, stating, "we see a new, low double-digit trend [in "billings" comp, defined as "revenue plus change in deferred revenue"] taking shape and have

lowered our price target to reflect the change." Lake Street Capital Markets further reported, "CommVault posted a disappointing fourth quarter with revenue 2.0% below consensus."

154. As another example, in a report entitled *A Few More Moving Parts in F4Q*, dated April 25, 2014, analysts at Jefferies Group lowered their price target on CommVault by nearly 20%, anticipating that based on the Company's disclosures, investors should now expect software revenue deceleration through fiscal year 2015.

155. Analysts similarly recognized that contrary to Defendants' representations, CommVault had not been able to replace Dell as a business partner. For example, in a report entitled *In penalty box near-term, but valuation following sell-off, quality keeps us at OP*, dated April 25, 2014, analysts at Macquarie (USA) Equities Research, who reduced their price target on CommVault by nearly 33%, reported that the Company had "signal[ed] acknowledgement of the fact that Dell's (20% of historical revenue) withdrawal of its Sales coverage to CVLT has not been adequately compensated by distribution partners such as Arrow." A William Blair report dated April 25, 2014 further reported that "[m]anagement noted that a prime contributor to the underperformance was ***understaffing*** in the core enterprise business in the Americas," confirming the impact of large numbers of sales force departures during the Class Period.

F. Software Revenue Growth Continues to Fall to Single Digits, as the Company Is Unable to Recover from the Loss of Its Dell Partnerships

156. Throughout fiscal 2015, CommVault's revenue growth slowed to single digits, as the Company was unable to recover from the loss of revenue from its prior partnerships with Dell. Specifically, in the first and second quarters of fiscal 2015, revenue growth continued to slow to

10% and 6.5%, respectively, resulting in a 37.9% year-to-date stock decline.[85] In the first quarter of fiscal 2015, software revenue growth was at 10% year-over-year and down 9% sequentially,[86] and in the second quarter of fiscal 2015, software growth was down 2% year-over-year and 4% sequentially.[87]

157. The market continued to attribute CommVault's declining revenue growth to the loss of its partnerships with Dell. For example, in a report called *CommVault Systems Patiently await 2HFY15 rebound*, dated July 29, 2014, analysts at Macquarie Capital (USA) stated, ***"We continue to believe CVLT's recent loss of momentum has been the result of past 20%-plus channel partner Dell's decision to pull away from CVLT and to start selling its own IP."***

VI. SUMMARY OF SCIENTER ALLEGATIONS

158. Numerous facts give rise to the strong inference that, throughout the Class Period, Defendants CommVault, Carolan, and Hammer knew or recklessly disregarded that, contrary to their repeated public statements, CommVault was experiencing decelerating software revenue growth due to the loss of its partnerships with Dell, and used the recognition of improperly deferred software revenue to hide the truth about decelerating revenue growth from investors.

159. First, the fact that the fraud concerned the Company's core products and a key business area, and was the focus of analysts' and investors' attention, is strong evidence of scienter. Specifically, software revenue accounted for 51% of CommVault's total revenues for fiscal 2013, 50% for fiscal 2012, and 48% for fiscal 2011,[88] and the vast majority of CommVault's services

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[85] *See* David Hernandez, *CommVault's Mid-Market Struggles Causing a Longer Term Problem*, SEEKING ALPHA (Dec. 14, 2014, 1:23 A.M.), http://seekingalpha.com/article/2729335-commvaults-mid-market-struggles-causing-a-longer-term-problem.

[86] CommVault Sys., Inc., Current Report (Form 8-K), at 4 (July 29, 2014).

[87] CommVault Sys., Inc., Q2 2015 Earnings Call, at 2 (Oct. 28, 2014).

[88] CommVault Sys., Inc., Annual Report (Form 10-K), at 40 (May 14, 2013).

revenue (making up, respectively, 49%, 50%, and 52%, in 2013, 2012, and 2011)[89] was dependent on software revenue. CommVault's revenue growth was thus entirely dependent on software revenue increases. Moreover, revenue from CommVault's partnerships with Dell constituted approximately 20% of the Company's total revenue in fiscal years 2007 through 2013, as reflected in the chart at ¶58 above. Indeed, in CommVault's 2013 Form 10-K, signed by Defendants Carolan and Hammer, the Defendants acknowledged that "[a] material portion of our software revenue is sometimes generated through our original equipment manufacturer agreements," including its OEM agreement with Dell, and that the Company "derive[s] a significant portion of [its] total revenues from sales of licenses of our software applications." In addition, the regular, consistent 20% year-over-year growth rate allowed CommVault's common stock to trade at a much greater P/E multiple than it would have if its growth rate experienced volatility. The fact that the Company's deferred revenue recognition scheme affected its primary products, largest business area, and critical business partner supports a strong inference of the Defendants' scienter.

160. Second, the Individual Defendants attended meetings where the Company's inability to generate sufficient software revenue to replace the revenue previously generated from its Dell partnerships was openly discussed. According to CW1, as confirmed by CW2, in July 2013, Defendants convened a week-long meeting of senior executives, including Defendants Carolan and Hammer, to address the fact that due to the loss of the business from the Dell partnerships, CommVault did not have enough sales leads in its "funnel" to meet its target software revenue numbers. CW2 stated that at the July 2013 meeting, Defendant Hammer announced that for the first time since CommVault started growing at the rate it did, there was a drop-off in business.

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[89] *Id.* at 48, 50.

161. Third, the fact that the Company's deferred software revenue "cookie jar" practice was well-known within the Company is further evidence of the Defendants' scienter. CW1 was "told by a number of people that this practice was happening, and that's why the numbers continued to look good even though we were losing revenue from Dell." Indeed, CW1 personally brought CW1's concerns regarding the deferred revenue scheme to CW1's boss, Dave West, Senior Vice President, Worldwide Marketing & Business Development (a member of CommVault's "litigation control group"), who reported to Ron Miiller, Senior Vice President, Worldwide Sales, who, in turn, reported to Defendant Hammer. CW1 further stated that the deferred revenue scheme was common knowledge at CommVault's headquarters in New Jersey. CW4 confirmed that "[a] lot of [CW4's team] was talking about [the deferred revenue scheme]," which CW4 had personally heard about from CW4's direct superior, CW3, as well as CW3's boss.

162. Fourth, the Individual Defendants repeatedly made detailed statements based on purported personal knowledge about the strength of the Company's stated revenue recognition policies and its compliance with GAAP and other applicable accounting rules; the impact of CommVault's rapidly shrinking deferred software revenue balance on software revenue growth; and the Company's replacement of Dell revenue with revenue generated from other distribution partners. For example, Defendant Hammer represented during the January 29, 2014 earnings conference call for the third quarter of fiscal 2014 that Defendants were ***"very strict"*** on when to recognize revenue, pursuant to their ***"very rigorous consistent revenue recognition checklist."*** With respect to the impact of the recognition of deferred revenue on software revenue growth, Defendant Hammer stated on the same call, ***"our license revenue and growth … is strong. … Don't get overly focused on deferred because you're going to get twisted up in your underwear."*** With respect to Dell, Defendant Hammer stated during the October 29, 2013 earnings conference

call for the second quarter of fiscal 2014, ***"we … completely mitigated any Dell risk"*** through replacement distribution partners.

163. In addition, CW4 confirmed that Defendants Carolan and Hammer "ran a tight ship."

164. Moreover, in their Certifications Pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, submitted with the Company's 2013 annual report on Form 10-K, along with each Form 10-Q filed during the Class Period, Defendants Hammer and Carolan represented that (i) they had reviewed the Company's respective filings; (ii) the reports did "not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made … not misleading"; (iii) the financial statements "fairly present in all material respects the financial condition, results of operations and cash flows" of CommVault; and (iv) the "information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company." These types of public comments – through which the Individual Defendants held themselves out as knowledgeable on these subjects – further support a strong inference of scienter.

165. Fifth, the Individuals Defendants were specifically asked, directly and repeatedly, whether the Company's recognition of deferred software revenue contributed to its ability to meet growth targets, and in response, Defendants emphatically denied that there was any such connection. Such denials reflect that the statements concerning such issues were either made with knowledge of their falsity or without any reasonable basis for the statements being made. For example, during the Company's January 29, 2014 earnings conference call for the third quarter of fiscal 2014 when an analyst indicated that there was a connection between the Company's achievement of its software revenue growth targets and its recognition of deferred revenue,

Defendant Hammer emphatically stated, ***"That is not true,"*** instructing the market not to ***"get overly focused on deferred because you're going to get twisted up in your underwear."*** The Individual Defendants were also specifically asked, directly and repeatedly, whether the Company's loss of its Dell partnerships would affect growth and, in response, Defendants falsely assured investors that the loss of its Dell partnerships would have no such effect. For example, an analyst noted during the March 11, 2014 Piper Jaffray investor conference, "It's pretty unique, in my opinion, for a company to basically take a 25% contributor to total revenue and then completely vacate that channel and not miss a beat in terms of revenue growth." In response, Defendant Hammer represented that all of Dell's business had been moved to other distribution partners, stating, ***"we moved those accounts to other resellers, in a very detailed programmatic way…."***

166. Sixth, the Individual Defendants repeatedly admitted to knowledge of a hiring problem at the Company, which (unbeknownst to investors) made it impossible to replace the software revenue previously received from Dell through the sale of CommVault software. Specifically, in the first, second, and third quarters of fiscal 2014, the Individual Defendants stated during the Company's earnings conference calls for those quarters that the Company had failed to meet its hiring targets. Moreover, multiple CWs confirmed that high sales force turnover was a problem at CommVault. For example, CW3 stated that approximately half of CommVault's sales representatives quit in 2013 as a result of Dell transitioning away from CommVault, and their resultant inability to meet their sales numbers. Compounding the problem, Defendants disclosed that any new hires required 12 months to become fully productive, further limiting the Company's ability to generate new deals.

167. Seventh, throughout the Class Period, the Defendants assured investors that the Company had "mitigated any Dell risk" and replaced Dell with other distribution partners.

Therefore, the Defendants knew (or recklessly disregarded) that the loss of CommVault's business partnerships with Dell presented a significant risk to the Company's revenue.

168. Eighth, CommVault's corporate culture of intimidation and unethical accounting practices also gives rise to a strong inference of scienter. For example, CW1 was laid off after raising questions and concerns regarding the Company's deferred revenue scheme, despite having driven 400% year-over-year growth during CW1's three years at CommVault. According to CW1, "because people were asking questions, they got laid off." CW1 reported CW1's concerns regarding Defendants' deferred revenue recognition scheme to CW1's boss, Dave West, Senior Vice President, Worldwide Marketing & Business Development, who reported to Ron Miiller, Senior Vice President, Worldwide Sales, who, in turn, reported to Defendant Hammer. West subsequently resigned effective March 31, 2014 under suspicious circumstances.

169. Moreover, CommVault's company culture emphasized meeting its targets at all costs. According to CW10, led by Defendant Hammer, CommVault was "always … focused on numbers and looking good for Wall Street… They did whatever possible to make it look like we were growing quarter-over-quarter." Indeed, CW10 and CW8 confirmed that unethical accounting practices were occurring at the Company.

170. Ninth, the Company's implementation of dramatic and unrealistic Company-wide sales policies in an effort to make up the software revenue previously generated through its partnerships with Dell, as confirmed by multiple CWs, is further evidence of the Defendants' scienter. For example, according to CW1, the Company attempted to make up for the lost revenue from Dell by dramatically raising sales quotas to unrealistic levels throughout the Company. CW4 confirmed that the Company kept raising sales quotas for the sales force, which resulted in high turnover. Indeed, according to CW3, approximately half of CommVault's sales representatives

quit in 2013 as a result of Dell transitioning away from CommVault and their resultant inability to make their sales numbers.

171. Tenth, while in possession of material, nonpublic information regarding CommVault's decelerating software revenue growth due to the loss of its partnerships with Dell and the Company's deferred revenue recognition scheme, Defendant Hammer sold substantial amounts of CommVault common stock at artificially inflated prices, reaping enormous profits. The prices at which Defendant Hammer sold his stock far exceeded the closing price of CommVault stock after the truth emerged about the Company's decelerating software revenue growth and the impact of the loss of CommVault's Dell partnerships on its business (*i.e.*, $47.56 on April 25, 2014).

172. In total, during the Class Period, Defendant Hammer sold more than 268,500 shares of CommVault stock for proceeds of more than $18.6 million, which was more than 31 times Hammer's base salary for 2014. Moreover, Hammer's sales during the Class Period far exceeded both his pre- and post-Class Period sales. Specifically, in the control period before the Class Period, from May 20, 2012 until May 6, 2013,[90] Hammer sold 175,000 shares for proceeds of approximately $10.7 million – slightly more than half of the proceeds he received from CommVault stock sales during the Class Period. Moreover, in the control period after the Class Period, from April 25, 2014 until March 12, 2015,[91] Hammer sold 131,494 shares for proceeds of approximately $6 million – approximately one-third of the amount Hammer received from his stock sales during the Class Period.

[90] The "control period" before the Class Period consists of 352 days, which is the length of the Class Period.

[91] As there are not 352 days between the end of the Class Period and the present, the "control period" after the Class Period consists of 322 days.

173. In addition, all of Defendant Hammer's sales during the Class Period occurred shortly after Defendants had made false statements about CommVault's software revenue growth, at times when CommVault stock was trading at artificially inflated prices. For example, on January 29, 2014, CommVault reported software revenue above analysts' expectations, and Defendant Hammer stated that Defendants' recognition of $4.1 million in software revenue for the third quarter of fiscal 2014 ***"did not impact … our software revenue significantly."*** Defendant Hammer further represented, ***"You guys are all twisted on up on deferred, but I think you're just overstating the impact of deferred to what's driving the growth of this Company."*** On February 11, 2014, Defendant Carolan reiterated Defendant Hammer's representation that visibility had increased, stating that ***"visibility actually increased at the end of the December quarter"*** and ***"things were accelerating, not decelerating in relative terms."*** The next day, on February 12, 2014, Defendant Carolan again stated that Hammer had talked about "visibility increasing from the end of September quarter to December" on the January 29, 2014 earnings conference call. ***Two days later,*** on February 14, 2014, Hammer sold 44,630 CommVault shares for proceeds of ***over $3 million***. ***Four days after that,*** on February 18, 2014, Hammer sold another 68,851 shares for proceeds of ***nearly $5 million***. On March 5, 2014, Hammer sold another 148,339 shares for ***over $10 million.***

174. Similarly, on March 11, 2014, when specifically asked about the impact of the loss of CommVault's Dell partnerships on the Company's business, Defendant Hammer represented that the Company's Dell accounts had been ***"moved … to other resellers, in a very detailed, programmatic way."*** ***Less than two weeks later,*** on March 21, 2014, Hammer sold another 6,686 shares for nearly half a million dollars.

175. The table below shows Defendant Hammer's sales of CommVault stock during the Class Period:

Defendant Hammer's Insider Stock Sales During the Class Period			
Date	**Number of Shares**	**Share Price (approximate)**	**Total Proceeds (Net of any Commissions)**
2/14/2014	44,630	$69.13	$3,085,271.90
2/18/2014	68,851	$68.95	$4,747,276.45
3/5/2014	148,339	$70.05	$10,391,146.95
3/21/2014	6,686	$70.00	$468,020.00
Total	**268,506**		**$18,691,715.30**

176. Eleventh, the magnitude of the fraud supports a strong inference of the Defendants' scienter. As reflected in the chart at ¶106 above, if CommVault had not recognized nearly $4.5 million in previously deferred software revenue in the second quarter of fiscal 2014, the Company would have had year-over-year software revenue growth of only 12% and would not have met analysts' software revenue expectations for that quarter, which Defendants had confirmed and adopted. Similarly, if CommVault had not recognized $4.1 million in previously deferred software revenue in the third quarter of fiscal 2014, the Company's quarterly software revenue growth would have been a mere 14% – six percent less than the 20% investors had been led to expect by Defendants.

VII. MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS OF MATERIAL FACT

177. As set forth below, throughout the Class Period, Defendants CommVault, Carolan, and Hammer made numerous false and misleading statements in which they misrepresented, or failed to disclose material facts concerning, among other things: (a) the extent to which the

Company timely recognized software revenue in accordance with GAAP; (b) the impact of the balance of the Company's deferred software revenue on software revenue growth; and (c) the impact of the loss of CommVault's partnerships with Dell on its software revenue growth, including CommVault's replacement of the revenue previously generated from Dell with revenue generated from other distribution partners.

A. Fourth Quarter and Fiscal Year 2013

1. The May 7, 2013 Disclosures

(a) Impact of Loss of Dell Partnerships

178. On May 7, 2013, before the start of the trading day, the Company announced its fourth quarter and fiscal 2013 financial results, in which it reported "record quarterly revenues." Also on May 7, 2013, before the start of trading, the Company held a conference call to discuss its fourth quarter and fiscal year 2013 financial results. During that call, Defendant Carolan stated that the Company had successfully shifted its small and medium business out of Dell and focused the Dell relationship on the enterprise business, and this strategy had "worked well." Defendant Carolan represented:

> Over the past year, ***we have successfully shifted most of our SMB [small and medium business] business to non-Dell distribution partners***. As a result, the majority of the revenue that is still transacted through Dell, comes from add-on purchases from our existing install base, and from new enterprise orders where our sales force is directly involved, and where we have unique product advantages. ***Our strategy of focusing our efforts with Dell, only in the enterprise segment, has worked well for both CommVault and Dell.***

179. Defendant Carolan's statements set forth in ¶178 above were materially false and misleading and omitted to disclose material facts. It was materially false and misleading to state that the Company's decision to focus its Dell partnerships only on the enterprise business had "worked well" when, in reality, CommVault had already lost the Dell enterprise business and this loss made it impossible for CommVault to meet its software revenue growth targets in fiscal year

2014. Indeed, according to CW2, CommVault's attempt to move away from the middle market and expand into the enterprise market was unsuccessful. It was also materially false and misleading to state that "we have successfully shifted most of our SMB business to non-Dell distribution partners" when, in reality, CommVault had not been able to replace the revenue previously generated from Dell through other distribution partners.

180. During the May 7, 2013 call, analysts questioned the Company's ability to maintain software revenue growth without Dell, and in response, Defendants provided concrete assurances that the transition away from Dell did not adversely affect the Company's growth. For example, in response to a question by an analyst from Craig-Hallum Capital Group concerning the impact on CommVault of the move away from Dell, given the historic flat revenue growth the Company attributed to Dell, Defendant Hammer represented that the Company was taking "very clear, direct action" to ensure that the revenue previously generated through Dell was now being generated through other distribution partners. Defendant Hammer stated, "we do not operate on hope. ***We operate on plans that we can execute …. [W]e're taking very clear, direct action, over time, to move more of our enterprise revenue that's currently at Dell, into other distribution partners ….***"

181. Defendant Hammer's statements in ¶180 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to replace the revenue previously generated from Dell through other distribution partners, and CommVault had already lost and would continue to lose revenue from the termination of the Dell partnerships. Indeed, multiple CWs, including CW2, confirmed that CommVault had not been able to replace the revenue generated from Dell with revenue generated from alternative distribution partners. Moreover, multiple CWs, including CW3, confirmed that by mid-2013, Dell

had told CommVault that it would not pay Dell sales representatives to sell CommVault products anymore. Finally, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

182. On the same call, in response to a question from a Piper Jaffray analyst concerning CommVault's relationship with Arrow, Defendant Hammer represented that the transition of CommVault's small and medium business away from Dell to other distribution partners such as Arrow and CDW had been a success, stating:

> ***[W]e have had very, very strong results from Arrow in general, and from some of the customers that sit under Arrow like CDW***. Some of that has come from what Brian [Carolan] mentioned that going back about a year ago, ***we shifted all -- for all practical purposes all of our SMB [small and medium business] business from Dell to other channels, and Arrow has picked up all of that slack plus some.*** So they've executed really well for us. That partnership has clearly strengthened and within the Arrow mix itself in terms of CommVault's business I think you'll have to ask them, but ***clearly they have been a really good distribution partner for us, and it's more than offset our SMB move out of Dell beginning about a year ago.***

183. Defendant Hammer's statements in ¶182 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to replace the revenue previously generated from Dell through other distribution partners, including Arrow and CDW, and CommVault had already lost and would continue to lose revenue from the termination of the Dell partnerships. Indeed, multiple CWs, including CW2, confirmed that CommVault had not been able to replace the revenue generated from Dell with revenue generated from its partnerships with Arrow and CDW.

2. The May 14, 2013 Form 10-K

(a) Timely Recognition of Revenue

184. On May 14, 2013, before the close of the market, the Company filed its annual report on Form 10-K for the fiscal year ended March 31, 2013, signed by Defendants Carolan and

Hammer. In the annual report, the Company announced that its deferred revenue from software licensing had nearly tripled, increasing from $3.1 million in the third quarter of fiscal 2013 to nearly $9.2 million, as reflected below:

CommVault Systems, Inc.

Notes to Consolidated Financial Statements (Continued)

(In thousands, except per share data)

	March 31,	
	2013	**2012**
Current:		
Deferred software revenue	$ 9,193	$ 3,764

185. Defendants defined "Deferred Revenue" in the annual report as follows:

> Deferred revenues represent amounts collected from, or invoiced to, customers in excess of revenues recognized. This results primarily from the billing of annual customer support agreements, as well as billings for other professional services fees that have not yet been performed by the Company and billings for license fees that are ***deferred due to one of the revenue recognition criteria not being met***. The value of deferred revenues will increase or decrease based on the timing of invoices and recognition of software revenue. The Company expenses internal direct and incremental costs related to contract acquisition and origination as incurred.

186. Defendants further stated in the annual report that the Company's consolidated financial statements had been prepared ***"in conformity with U.S. generally accepted accounting principles."***

187. In Exhibit 31.1 of the annual report, Defendant Hammer further certified, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002:

> Based on my knowledge, ***this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report***;

> Based on my knowledge, ***the financial statements, and other financial information included in this report, fairly present in all material respects the***

financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

188. In Exhibit 31.2 of the annual report, Defendant Carolan made the same certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as set forth in ¶187 above.

189. In Exhibit 32.1 of the annual report, Defendant Hammer further certified, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002: ***"The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company."***

190. In Exhibit 32.2 of the annual report, Defendant Carolan made the same certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as set forth in ¶189 above.

191. Defendants CommVault, Carolan, and Hammer's statements set forth in ¶¶184-90 above were materially false and misleading, and omitted to disclose material facts, because in violation of GAAP, Defendants reported a software deferred revenue balance of $9.2 million, a material portion of which CommVault should have recognized as realized or realizable and earned in the fourth quarter of fiscal 2013 and which was being saved to mask CommVault's undisclosed declining growth prospects.

B. First Quarter of Fiscal Year 2014

1. The July 30, 2013 Disclosures

(a) Impact of Loss of Dell Partnerships

192. On July 30, 2013, before the start of the trading day, the Company announced its financial results for the first quarter of fiscal 2014 and held a conference call to discuss those results. During that call, Defendant Carolan represented that the Company had "successfully" transitioned its small and medium business from Dell to other distribution partners, and

"remain[ed] confident" that the move away from Dell would not affect revenue growth. Defendant Carolan stated:

> Over the past 12 to 15 months ***we have successfully shifted most of our SMB [small and medium business] business to non Dell distribution partners.***
>
> ***
>
> In summary, ***we remain confident in our ability to continue to achieve solid double-digit revenue growth during FY 2014 despite the continued shift away from Dell distribution.***

193. Defendant Carolan's statements set forth in ¶192 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to replace the revenue previously generated from Dell through other distribution partners, and CommVault had already lost and would continue to lose revenue from the termination of the Dell partnerships. Indeed, CW1, confirmed by CW2, stated that in July 2013, Defendants held a meeting of senior executives, including Defendants Carolan and Hammer, to address the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in the "funnel" to meet its target revenue numbers. Finally, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

194. In addition, during the July 30, 2013 call, in response to an analyst's question regarding CommVault's partnerships with Dell, Defendant Hammer represented:

> Clearly we are in the process of disengaging from Dell as Brian [Carolan] mentioned. ***We disengaged in the mid market last year successfully***. … ***[W]e are making sure we can execute our plan with minimal participation from Dell over the long term.***

195. Defendant Hammer's statements set forth in ¶194 above were materially false and misleading, and omitted to disclose material facts, because (i) the loss of Dell's small and medium business and Dell's enterprise business made it impossible for CommVault to meet its software

revenue growth targets in fiscal year 2014; (ii) CommVault had not been able to replace the revenue previously generated from Dell through other distribution partners; and (iii) CommVault had already lost and would continue to lose revenue from the termination of the Dell partnerships.

2. The August 1, 2013 Form 10-Q

(a) Timely Recognition of Revenue

196. On August 1, 2013, during the trading day, the Company filed with the SEC a Form 10-Q signed by Defendants Hammer and Carolan, reflecting CommVault's financial results for the first quarter of fiscal 2014. In the Form 10-Q, the Company announced that its deferred revenue from software licensing had decreased from $9,193,000 at year-end to $9,176,000, as reflected below:

CommVault Systems, Inc.

Notes to Consolidated Financial Statements – Unaudited (continued)

(In thousands, except per share data)

	June 30, 2013	**March 31, 2013**
Current:		
Deferred software revenue	$ 9,176	$ 9,193

197. In the Form 10-Q, Defendants further defined "Deferred Revenue" using language identical to the language used in CommVault's 2013 annual report described in ¶185 above, with the following exception: "The value of deferred revenues will increase or decrease based on the timing of invoices and recognition of revenue."

198. Defendants further stated in the Form 10-Q that the Company's consolidated financial statements had been prepared ***"in conformity with U.S. generally accepted accounting principles."***

199. Moreover, in Exhibits 31.1, 31.2, 32.1, and 32.2 of the Form 10-Q, Defendants Hammer and Carolan made certifications pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 identical to their certifications in Exhibits 31.1, 31.2, 32.1, and 32.2 to CommVault's 2013 annual report, described in ¶¶187-90 above.

200. Defendants CommVault, Carolan, and Hammer's statements set forth in ¶¶196-99 above were materially false and misleading, and omitted to disclose material facts, because in violation of GAAP, Defendants reported a software deferred revenue balance of nearly $9.2 million, a material portion of which CommVault should have recognized as realized or realizable and earned in the fourth quarter of fiscal 2013 and which was being saved to mask CommVault's undisclosed declining revenue growth prospects.

C. Second Quarter of Fiscal Year 2014

1. The October 29, 2013 Disclosures

(a) Timely Recognition of Revenue

201. On October 29, 2013, before the start of the trading day, the Company announced its financial results for the second quarter of fiscal 2014 and held a conference call to discuss those results. During that call, Defendant Hammer represented that the Company followed "extremely strict rules" for revenue recognition, stating, "[W]e've got, as I think everybody's aware, ***extremely strict rules that go – that are tight on revenue recognition and appropriately so to make sure that we have got the highest quality of earnings in the industry***."

202. Defendant Hammer's statements set forth in ¶202 above were materially false and misleading, and failed to disclose material facts, because in violation of GAAP: (i) Defendants improperly deferred until the second quarter of fiscal 2014 the recognition of as much as $4.5 million in software revenue that CommVault should have recognized as realized or realizable and earned during prior periods; and (ii) Defendants continued to improperly defer the recognition of

$4.7 million in software revenue that CommVault should have recognized as realized or realizable and earned during prior periods. As discussed in Section V.D above, the software revenue deferral was being fraudulently used to mask a decline in CommVault's business.

(b) Impact of Deferred Software Revenue Balance on Growth

203. On the same October 29, 2013 earnings conference call, the Individual Defendants represented that the recognition of deferred software revenue did not indicate that revenue growth was slowing. For example, an analyst from Raymond James & Associates asked Defendant Carolan:

> On the deferred, it sounds like it is pretty lumpy and obviously had the fall off this quarter in the license fees. But as we calculated billings or bookings, they were below the rate of revenue growth this time. Typically they have been about the same. So, given the lumpiness, does that make sense Brian, to think that rate starts to head back up towards your revenue growth rate?

204. In response, Defendant Carolan stated, ***"I wouldn't read into the quarterly swings …."***

205. Defendant Carolan's statement in ¶204 above was materially false and misleading, and omitted to disclose material facts. It was materially false and misleading to tell investors not to "read into quarterly swings" in deferred revenue as a measure of software revenue growth when, in reality, Defendants were actively masking a decline in software revenue growth by recognizing improperly deferred software revenue. Indeed, as detailed in Section V.E. above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue was decelerating and as a result, reported software revenue substantially declined.

206. Similarly, an analyst from Lazard Capital Markets asked the Defendants, "How meaningful is [the deferred revenue number] as a metric?" In response, Defendant Carolan stated, "Software [revenue] is the smallest portion that is in [the deferred revenue balance]. ***Software will***

fluctuate from quarter to quarter depending on the timing of recognition and very large perpetual deals." Defendant Carolan further represented that "the totality of deferred revenue was up 24% year-over-year, ***which is fairly strong growth*** …"

207. Defendant Carolan's statements in ¶206 above were materially false and misleading, and omitted to disclose material facts. It was materially false and misleading to state that "[s]oftware will fluctuate from quarter to quarter depending on the timing of recognition and very large perpetual deals," when, in reality, software revenue was decelerating and Defendants were recognizing deferred software revenue to hide the deceleration. It was also materially false and misleading to state that the "totality of deferred revenue" was indicative of "fairly strong growth" when, in reality, deferred software revenue was not growing, and Defendants were actively masking a decline in software revenue growth by recognizing improperly deferred software revenue. Indeed, as detailed in Section V.E. above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue growth was decelerating and as a result, reported software revenue substantially declined.

208. Similarly, an analyst from Lazard Capital Marketsasked the Defendants, "How meaningful is [the deferred revenue number] as a metric?" , Defendant Hammer represented:

> ***The combination of visibility and funnel has also improved on a relative basis.*** So the way I would read into that is, ***our business momentum has clearly increased***, despite of the, as you would call it – I'd call it a very difficult environment – but ***our momentum has improved***. But also, it has to improve for us to hit the numbers we want. So, fortunately, so far, ***we've seen that momentum improvement occur.***

209. Defendant Hammer's statements in ¶208 above were materially false and misleading, and omitted to disclose material facts. It was materially false and misleading to state the Company's ability to "hit the numbers we want" was due to "momentum improvement" when,

in reality, software revenue growth was decelerating and Defendants were only "hit[ting] the numbers [they] want[ed]" because they had improperly deferred the recognition of nearly $4.5 million in software revenue until the second quarter of fiscal 2014. Indeed, as detailed in Section V.E above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue growth was decelerating and as a result, reported software revenue growth substantially declined. Moreover, it was materially false and misleading to state that "visibility and funnel has . . . improved," "business momentum has clearly increased," "momentum has improved," and "we've seen that momentum improvement occur," when, in reality, CommVault had not been able to replace the revenue previously generated from Dell through other distribution partners, and CommVault had already lost and would continue to lose revenue from the Dell partnerships. Indeed, CW1, confirmed by CW2, stated that in July 2013, Defendants held a meeting of senior executives, including Defendants Carolan and Hammer, to address the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in the "funnel" to meet its target software revenue numbers.

(c) Impact of Loss of Dell Partnerships

210. On the October 29, 2013 earnings conference call, Defendants also made materially false and misleading statements, and omitted to disclose material facts, concerning the impact of the loss of CommVault's partnerships with Dell, and specifically, CommVault's efforts to replace Dell with other distribution partners. For example, Defendant Hammer represented in response to a Needham & Company analyst's request that Defendants "comment . . . on some of [its] other distribution partners":

> Hitachi, in the field, we have got, I would say globally, extremely good traction on very high growth. ***Obviously, we have done really well in the US with Arrow and the whole distribution network, the resale network underneath them, particularly on some of the higher velocity initiatives in the Dell replacement with partners***

> ***like CDW. We had to completely mitigated [sic] any Dell risk.*** With those kind of initiatives, you will see it in our numbers going forward where Dell is going to go down….

211. Defendant Hammer's statements in ¶210 above were materially false and misleading, and omitted to disclose material facts. It was materially false and misleading to state that "we have done really well in the US with" replacement distribution partners, including Hitachi, Arrow, and CDW, when, in reality, CommVault had not been able to replace the revenue previously generated from Dell through its relationships with these distribution partners, and these relationships were not going "really well." Indeed, multiple CWs, including CW2, confirmed that CommVault had not been able to replace the revenue generated from Dell with revenue generated from its partnerships with Hitachi, Arrow, and CDW. CW4 further confirmed that CommVault's relationship with Hitachi suffered. Moreover, CW1, confirmed by CW2, stated that in July 2013, Defendants held a meeting of senior executives, including Defendants Carolan and Hammer, to address the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in the "funnel" to meet its target software revenue numbers. Finally, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

212. In response to a Credit Suisse analyst's question concerning CommVault's small and medium business segment, Defendant Hammer also represented that the "mov[e] away from Dell" had "actually help[ed]" that business. Defendant Hammer stated, "we have had … ***consistent steady growth and we are improving our position*** …. ***Moving away from Dell is actually helping that instead of hurting it.*** …"

213. Defendant Hammer's statements in ¶212 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to replace the software revenue previously generated from Dell through other business partners, and

the loss of Dell's small and medium business contributed to CommVault's inability to meet its software revenue growth targets in fiscal year 2014.

2. The October 31, 2013 Form 10-Q

(a) Timely Recognition of Revenue

214. On October 31, 2013, during the trading day, the Company filed with the SEC a Form 10-Q signed by Defendants Hammer and Carolan, reflecting CommVault's financial results for the second quarter of fiscal 2014. In the Form 10-Q, the Company announced that its deferred revenue from software licensing had decreased from $9,176,000 in the first quarter of fiscal 2014 to $4,700,000, as reflected below and at ¶196:

CommVault Systems, Inc.

Notes to Consolidated Financial Statements – Unaudited (continued)

(In thousands, except per share data)

	September 30, 2013	**March 31, 2013**
Current:		
Deferred software revenue	$ 4,700	$ 9,193

215. In the Form 10-Q, Defendants further defined "Deferred Revenue" using language identical to the language used in CommVault's 2013 annual report described in ¶185 above, with the following exception "The value of deferred revenues will increase or decrease based on the timing of invoices and recognition of revenue."

216. Defendants further stated in the Form 10-Q that the Company's consolidated financial statements had been prepared ***"in conformity with U.S. generally accepted accounting principles."***

217. Moreover, in Exhibits 31.1, 31.2, 32.1, and 32.2 of the Form 10-Q, Defendants Hammer and Carolan made certifications pursuant to Sections 302 and 906 of the Sarbanes-Oxley

Act of 2002 identical to their certifications in Exhibits 31.1, 31.2, 32.1, and 32.2 to CommVault's 2013 annual report, described in ¶¶187-90 above.

218. Defendants CommVault, Carolan, and Hammer's statements set forth in ¶¶214-18 above were materially false and misleading, and omitted to disclose material facts, because in violation of GAAP: (i) Defendants deferred until the second quarter of fiscal 2014 the recognition of nearly $4.5 million in software revenue that CommVault was required to recognize as realized or realizable and earned during prior periods; and (ii) Defendants continued to improperly defer the recognition of $4.7 million in software revenue that CommVault should have recognized as realized or realizable and earned during prior periods. As discussed in Section V.D. above, the software revenue deferral was being fraudulently used to mask a decline in CommVault's business.

D. The January 14, 2014 Response to the SEC's Comment Letter

219. As discussed above in ¶¶46-48, in its Form 10-Q for the second quarter of fiscal 2014, filed on October 31, 2013, the Company announced that it had decided to terminate its OEM agreement with Dell as of December 16, 2013. In response to this disclosure, the SEC issued a comment letter to Defendant Carolan, dated January 3, 2014, reflecting the SEC's concern about the impact of the terminated OEM agreement on the Company's financial results and requesting, *inter alia*, that the Company provide the specific percentages of revenue attributable to CommVault's OEM and reseller agreements with Dell over a specified time period.

220. In response, Defendant Carolan stated by letter dated January 14, 2014, "we believe that the impact of the terminated OEM agreement ***is not material to our business or results of operations*** and that ***our prior disclosures are adequate to allow investors to understand the potential impact to our results***." Carolan's letter was made publicly available to investors on the SEC's website on the same day.

221. Defendant Carolan's statements set forth in ¶220 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to replace the revenue previously generated from Dell through alternative OEM partners, and CommVault had already lost and would continue to lose revenue from the termination of the Dell partnerships. Indeed, multiple CWs confirmed that the dissolution of CommVault's OEM agreement with Dell had a material, negative impact on the Company's revenue. For example, CW1, confirmed by CW2, stated that Defendants Hammer and Carolan held a week-long meeting in July 2013 to address the dissolution of CommVault's OEM agreement with Dell and the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in the "funnel" to meet its target software revenue numbers. Moreover, it was materially false and misleading to state that "our prior disclosures are adequate to allow investors to understand the potential impact to our results" when, in reality, Defendants were actively masking the decelerating software revenue growth due to the loss of CommVault's partnerships with Dell by recognizing improperly deferred software revenue.

E. <u>Third Quarter of Fiscal Year 2014</u>

1. The January 29, 2014 Disclosures

222. On January 29, 2014, before the start of the trading day, the Company announced its financial results for the third quarter of fiscal 2014, and held a conference call to discuss those results. In the Company's press release attached to the Form 8-K filed with the SEC announcing these results and signed by Defendant Carolan, Defendant Hammer represented that CommVault had again achieved year-over-year software revenue growth of 20%. During the conference call, Defendant Carolan disclosed, for the first time, that the Company had recognized \$4.1 million in deferred software revenue for the quarter, depleting the balance to \$603,000. During the same call, Defendant Carolan also disclosed, for the first time, that total revenues from CommVault's

Dell partnerships were down 28% year-over-year and 38% sequentially. However, despite these acknowledgements – which still dramatically understated the truth about the Company's rapidly decelerating software revenue growth due to the loss of its partnerships with Dell – Defendants continued to make materially false and misleading statements on the January 29, 2014 conference call and throughout the remainder of the Class Period. Moreover, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

(a) Timely Recognition of Revenue

223. On the January 29, 2014 conference call, Defendants represented that the Company rigorously followed the rules governing the timing of the recognition of revenue. For example, in response to a question from a Raymond James analyst concerning whether "visibility" was the same as "revenue," Defendant Hammer stated: ***"… we're very strict on how we – and as soon as it is revenue, it becomes revenue. We have a very rigorous consistent revenue recognition checklist here."***

224. Defendant Hammer's statements set forth in ¶223 above were materially false and misleading, and omitted to disclose material facts, because in violation of GAAP, Defendants improperly deferred the recognition of $9.2 million in software revenue, a material portion of which CommVault was required to recognize as realized or realizable and earned in the fourth quarter of fiscal 2013, including $4.1 million in software revenue that CommVault did not recognize until the third quarter of fiscal 2014.

(b) Impact of Deferred Software Revenue Balance on Growth

225. On the January 29, 2014 conference call, Defendants repeatedly assured investors that the decline in deferred software revenue was not indicative of decelerating software revenue growth. For example, in response to a question from a BMO Capital Markets analyst, Defendant

Carolan stated: "That [deferred revenue] will fluctuate a bit quarter to quarter, but we feel that ***it's not a good indicator of our licensed revenue growth,*** which was up 20% year over year …."

226. It was false and misleading for Defendant Carolan to state that deferred revenue is "not a good indicator of licensed revenue growth, which was up 20% year over year" when, in reality, Defendants were only able to meet their software revenue growth target of 20% year-over-year by recognizing $4.1 million in improperly deferred software revenue. Indeed, as detailed in Section V.E above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue growth was decelerating and as a result, software revenue growth substantially declined.

227. Similarly, in response to a question from a William Blair analyst observing that over the past few quarters, CommVault had "been able to take some things off the balance sheet, which has allowed you to grow [software revenue] very nicely," Defendant Hammer stated:

> ***That is not true.*** Let's be really clear. ***In Q3, that revenue did not come off the balance sheet. The revenue was due to, on software revenue, was due to pure license revenue growth***. That is the misconception out there. Total revenue, yes, it impacts total revenue, but ***it does not impact or did not impact in Q3, our software revenue significantly.***
>
> ***
>
> I'll let Brian [Carolan] take this from here, but to be really clear, we had extremely strong license revenue growth based on million dollar deals. They were at a record and it drove our results. That's what you've got to focus on. ***You guys are all twisted on up on deferred, but I think you're just overstating the impact of deferred to what's driving the growth of this Company***.

228. Defendant Hammer's statements set forth in ¶227 above were materially false and misleading, and omitted to state material facts. It was materially false and misleading to state that Q3 revenue "was due to pure license revenue growth" and not the recognition of deferred software revenue when, in reality, Defendants had actively masked a decline in software revenue growth by recognizing $4.1 million in improperly deferred software revenue for that quarter. Moreover, it

was materially false and misleading to state that the market was "twisted on up on deferred" and "overstating the impact of deferred to what's driving the growth of this Company," when Defendants would not have been able to achieve 20% year-over-year software revenue growth for the quarter without recognizing $4.1 million in improperly deferred software revenue. Indeed, as detailed in Section V.E above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue growth was decelerating and as a result, software revenue growth substantially declined.

229. Later on the same call, Defendant Hammer further assured investors that the Company's "visibility" and "funnels" remained strong and that investors should be focused on CommVault's strong visibility and funnels, and not on its diminished deferred software revenue, as a measure of software licensing revenue growth. For example, in response to a question from a Pacific Crest analyst asking "why you feel better about visibility going into this quarter than last year versus some metrics we see that are a bit contrary to that," which included the fact that "deferred revenue didn't increase as much as it seasonally has in the past this quarter," Defendant Hammer stated:

> ***[I]mpact to our software revenue growth from deferred is small and getting smaller….***
>
> The visibility that I talk about -- I talk about visibility and I talk about funnel. What visibility is are deals that we've shipped software or we have orders for or we can see that they're going to ship early in the quarter, but we haven't gotten paid or they just don't meet our revenue recognition guidelines. It just says that ***we have strength -- the visibility is going up on a relative basis.***
>
> We have strength for early in the quarter revenue that has an extremely high profitability of closing early in the quarter, but it doesn't show up in deferred and internally we separate that from -- it's the high potential probability part of our funnel. Funnel is your total opportunities for the quarter. Right now, in Q4, when you have ***higher visibility than we had going into Q3 and our funnel in Q4 is higher than we had in Q3,*** so the combination of the two says that we have a reasonably good outlook looking into Q4.

230. Defendant Hammer's statements set forth in ¶229 above were materially false and misleading, and omitted to state material facts. It was materially false and misleading to state that "impact to our software revenue growth from deferred is small and getting smaller" when, in reality, Defendants were only able to meet their software revenue growth target of 20% year-over-year for the quarter by recognizing $4.1 million in improperly deferred software revenue. Indeed, as detailed in Section V.E above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue growth was decelerating and as a result, software revenue growth substantially declined. Moreover, it was false and misleading to state that visibility and funnel were "higher" and "going up" when, in reality, visibility and funnel were down due to CommVault's inability to replace the revenue generated from Dell through other business partners. Indeed, CW1 confirmed that in July 2013, Defendants held a meeting to address the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in the "funnel" to meet its target revenue numbers.

231. In response to a question by an analyst from Raymond James seeking to confirm that deferred software revenue had in fact decreased by $4.1 million, Defendant Hammer again emphatically urged investors not to focus on deferred revenue as a measure of software revenue growth:

> Let me clarify something. That is correct. It's where the math is, but 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.***

232. Defendant Hammer's statements set forth in ¶231 above were materially false and misleading, and omitted to state material facts. It was materially false and misleading to state that

CommVault's "license revenue and growth … is strong," when, in reality, Defendants had actively masked a decline in software revenue growth by recognizing $4.1 million in improperly deferred software revenue for the quarter. Moreover, it was materially false and misleading to instruct the market not to "get overly focused on deferred because you're going to get twisted up in your underwear," when, in reality, Defendants were only able to meet their software revenue growth target of 20% year-over-year for the quarter by recognizing $4.1 million in improperly deferred software revenue. Indeed, as detailed in Section V.E above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue growth was decelerating and as a result, reported software revenue growth substantially declined.

(c) Impact of Loss of Dell Partnerships

233. During the January 29, 2014 conference call, Defendants also reassured investors that the transition away from Dell had been successful. For example, Defendant Hammer represented, ***"We continue to meet our stated objectives in transitioning away from Dell to other distribution partners."***

234. Defendant Hammer's statement set forth in ¶233 above was materially false and misleading, and omitted to state material facts, because CommVault had not been able to replace the revenue previously generated by Dell through other distribution partners.

235. On the same call, analysts questioned the impact of the loss of revenue from Dell on CommVault's deferred revenue balance, and the Defendants represented that there would be no impact. For example, an analyst from Stifel Nicolaus asked:

> As a follow-up to the deferred revenue discussion, I know that you had mentioned, obviously, a ***sharp falloff in the Dell relationship*** and you also alluded to that majority being driven by the maintenance stream of that relationship. Has that or should we expect that to continue or will that ***weigh on the deferred revenue***

> ***balance as we go forward?*** Or rather, are you able to replenish that maintenance stream into that deferred revenue line?

236. In response, Defendant Carolan stated, ***"No, it won't have an impact. Any kind of falloff in Dell revenue … will just be replaced through alternative distribution channels."***

237. Defendant Carolan's statements set forth in ¶236 above were materially false and misleading, and omitted to state material facts, because CommVault had not been able to replace the revenue previously generated by Dell through other distribution partners, and Defendants were recognizing improperly deferred software revenue to mask the deceleration in software revenue growth caused by the loss of the Company's partnerships with Dell. Moreover, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

238. On the same call, in response to a question from a Raymond James analyst concerning CommVault's smaller competitors, Defendant Hammer represented that the Company had successfully moved its business away from Dell. Defendant Hammer stated: ***"We successfully -- everybody thought we couldn't, in a few quarters, navigate our way out of Dell; for all practical purposes, we're out. We've moved those accounts and that revenue to other distribution partners."***

239. Defendant Hammer's statements set forth in ¶238 above were materially false and misleading, and omitted to state material facts, because CommVault had not been able to replace the revenue previously generated by Dell through other distribution partners. Moreover, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

2. The January 31, 2014 Form 10-Q

(a) Timely Recognition of Revenue

240. On January 31, 2014, during the trading day, the Company filed with the SEC a Form 10-Q signed by Defendants Hammer and Carolan, reflecting CommVault's financial results for the third quarter of fiscal 2014. In the Form 10-Q, Defendants further defined "Deferred Revenue," using language identical to the language used in CommVault's 2013 annual report described in ¶185 above, with the following exceptions: (i) "… receipt of license fees that are deferred due to one of the revenue recognition criteria not being met"; and (ii) "The value of deferred revenues will increase or decrease based on the timing of invoices and recognition of revenue."

241. Defendants further stated in the Form 10-Q that the Company's consolidated financial statements had been prepared ***"in conformity with U.S. generally accepted accounting principles."***

242. Moreover, in Exhibits 31.1, 31.2, 32.1, and 32.2 of the Form 10-Q, Defendants Hammer and Carolan made certifications pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 identical to their certifications in Exhibits 31.1, 31.2, 32.1, and 32.2 to CommVault's 2013 annual report, described in ¶¶187-90 above.

243. Defendants CommVault, Carolan, and Hammer's statements set forth in ¶¶240-42 above were materially false and misleading, and omitted to disclose material facts, because in violation of GAAP, Defendants deferred until the third quarter of fiscal 2014 the recognition of nearly $4.7 million in software revenue that CommVault was required to recognize as realized or realizable and earned in prior periods.

(b) Impact of Loss of Dell Partnerships

244. In the same Form 10-Q, Defendants also made materially false and misleading statements, and omitted to disclose material facts, concerning the impact of the loss of CommVault's OEM agreement with Dell on the Company's finances. Defendants stated: "Historically, there was also an original equipment manufacturer agreement with Dell, which was terminated in December of 2013. ***The Company believes the termination of this agreement will not have a material effect on the business."***

245. The Individual Defendants' statements set forth in ¶244 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to replace the revenue previously generated from Dell through alternative OEM partners, and CommVault had lost and would continue to lose revenue from the termination of the Dell partnerships. Indeed, multiple CWs confirmed that the dissolution of CommVault's OEM agreement with Dell had a material negative impact on the Company's revenue. For example, CW1, confirmed by CW2, stated that Defendants Hammer and Carolan held a week-long meeting in July 2013 to address the dissolution of CommVault's OEM agreement with Dell and the fact that due to the loss of business from the Dell partnerships, CommVault did not have enough sales leads in the "funnel" to meet its target revenue numbers.

F. <u>Fourth Quarter of Fiscal Year 2014</u>

246. As noted above, CommVault continued through the fourth quarter of fiscal 2014 to fail to generate software revenue from other distribution partners to replace the revenue generated from Dell. Moreover, having depleted nearly all of its deferred software revenue in the third quarter of fiscal 2014, CommVault was no longer able to draw from its "cookie jar" to hide the true software revenue deceleration that the Company was experiencing. Nonetheless, as set forth below, during the fourth quarter of fiscal 2014, Defendants repeatedly assured investors that both

CommVault's recently depleted deferred software revenue balance and the loss of its business partnerships with Dell had no impact on the Company's software revenue growth.

1. The February 11, 2014 Stifel Nicolaus Technology, Internet & Media Conference

(a) Impact of Deferred Software Revenue Balance on Growth

247. On February 11, 2014, during the trading day, the Company presented at the Stifel Nicolaus Technology, Internet & Media Conference. During this conference, Defendants again assured investors that deferred software revenue was not an indicator of revenue growth, and urged investors to focus on "visibility" instead of deferred revenue. For example, in response to a Stifel Nicolaus analyst's request that Defendants "touch on just reminding people where we stand on the deferred discussion and to put it out there, and then how we kind of think about what you look at in terms of the visibility," Defendant Carolan represented:

> As we stated on the [January 29, 2014 earnings conference] call, we look at not only what's sitting on balance sheet, but what's sitting off balance sheet in terms of what we call visibility. These are orders that have not met the GAAP requirements for being put on the balance sheet, something that we track internally. Bob [Hammer] did make the statements and we all stand behind it is that ***our visibility actually increased at the end of the December quarter in comparison to our September quarter.*** So we actually felt like the ***business had good momentum leaving the quarter***. We felt that ***things were accelerating, not decelerating in relative terms.***

248. Defendant Carolan's statements in ¶247 above were materially false and misleading, and omitted to disclose material facts. It was materially false and misleading to state that "business had good momentum leaving the quarter" and "things were accelerating, not decelerating," when, in reality, Defendants were only able to meet their software revenue growth target of 20% year-over-year for the third quarter of fiscal 2014 by recognizing $4.1 million in improperly deferred software revenue. Indeed, as detailed in Section V.E above, when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer

able to hide the fact that software revenue growth was decelerating and as a result, reported software revenue growth substantially declined. Moreover, it was materially false and misleading to state that "visibility actually increased" when, in reality, visibility was down due to CommVault's inability to replace the revenue generated from Dell through other business partners. Finally, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

2. The February 12, 2014 Goldman Sachs Technology and Internet Conference

(a) Impact of Loss of Dell Partnerships

249. On February 12, 2014, during the trading day, the Company presented at a Goldman Sachs Technology and Internet Conference. Here, again, Defendants represented that they had replaced Dell with other business partners. Defendant Carolan stated:

> ***We've killed our OEM agreement with them [Dell], effective December, 2013. This was a very successful transition for us.*** ... [Y]ou'll see other partners we do work with, such as Arrow, Avnet, HDS, you'll start seeing them start to pick up new habits, see them pick up some of the offset from the Dell decline. ***So we've seen very little impact to the business, we feel like it was a well-executed plan.***

250. Defendant Carolan's statements in ¶249 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to replace the revenue previously generated from Dell through other distribution partners, including Arrow, and CommVault had lost and would continue to lose revenue from the termination of the Dell partnerships. Indeed, multiple CWs, including CW2, confirmed that CommVault had not been able to replace the revenue generated from Dell with revenue generated from its partnerships with Arrow. Moreover, CW1, confirmed by CW2, stated that in July 2013, Defendants held a meeting of senior executives, including Defendants Carolan and Hammer, to address the fact that due to the loss of business from the Dell partnerships, CommVault was "way off [its] numbers for

the fiscal year [2014]." Finally, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

3. The March 11, 2014 Piper Jaffray Technology, Media and Telecommunications Conference

(a) Impact of Loss of Dell Partnerships

251. On March 11, 2014, during the trading day, the Company presented at the Piper Jaffray Technology, Media and Telecommunications conference. During this conference, analysts continued to focus on the impact of the loss of CommVault's Dell partnerships on the Company's revenue, and Defendants continued to represent that the "shift away" from Dell would have no impact. For example, a Piper Jaffray analyst asked:

> Maybe if we just turn toward your end markets now, last quarter your OEM agreement with Dell terminated in the December quarter of 2013. ***It's pretty unique, in my opinion, for a company to basically take a 25% contributor to total revenue and then completely vacate that channel and then not miss a beat in terms of revenue growth***. And so I guess, can you give us any color in terms of what have you been doing there to move away from Dell?

252. In response, Defendant Hammer represented that all of Dell's business had been moved to other distribution partners. Defendant Hammer stated:

> So we clearly did -- so we don't have to go through all the background as to why. But we -- you know, I think we said earlier that we control a lot of those accounts. ***And what we did is we moved those accounts to other resellers, in a very detailed, programmatic way***….
>
> And it was done as a major project, very detailed, very structured. It took a lot of energy and effort, but ***it's done***. …
>
> When we did that, ***we also moved revenue to the high velocity midmarket with partners like [TBW] [sic, CDW] and bundled products specifically to the midmarket. We did that, and at the same time we're moving our enterprise guys to the high end enterprise.*** …

253. Defendant Hammer's statements in ¶252 above were materially false and misleading, and omitted to disclose material facts, because CommVault had not been able to

replace the revenue previously generated from Dell through other distribution partners, including CDW, and CommVault had lost and would continue to lose revenue from the termination of the Dell partnerships. Indeed, multiple CWs, including CW2, confirmed that CommVault had not been able to replace the revenue generated from Dell with revenue generated from its partnerships with CDW. CW2 also described CommVault's attempt to move away from the middle market and expand into the enterprise market as unsuccessful. Moreover, Defendants failed to disclose that attrition among CommVault's salesforce would impair its ability to replace Dell revenue and otherwise meet growth targets.

VIII. LOSS CAUSATION

254. The market price of CommVault's publicly traded common stock was artificially inflated by the material misstatements and omissions complained of herein, including the misstatements and omissions about CommVault's compliance with GAAP, its use of improperly deferred software revenue to mask decelerating software growth, and the impact of the loss of its partnerships with Dell on its software revenue growth.

255. The artificial inflation in CommVault's stock price was removed when the conditions and risks misstated and omitted by Defendants were revealed to the market or materialized. The corrective information was partly disseminated and the previously concealed risks partly materialized through partial disclosures on January 29, 2014 and April 25, 2014, respectively, which partly revealed the nature and extent of Defendants' deferred revenue scheme, including the impact of the loss of CommVault's Dell partnerships on its revenue. These disclosures and materializations of the previously concealed risks, more particularly described below, reduced the price of CommVault's publicly traded stock, causing economic injury to Lead Plaintiff and other members of the Class.

256. Neither disclosure was sufficient on its own to fully remove the inflation from CommVault's stock price, because each only partially revealed the risks and conditions that had been concealed from investors. The corrective impact of the disclosures alleged herein was tempered by Defendants' continued misstatements and omissions about the Company's software revenue growth, including its ability to "hit [its] numbers" without Dell. These misrepresentations and omissions continued to maintain the price of CommVault's publicly traded stock at levels that were artificially inflated, inducing members of the Class to continue purchasing CommVault's stock even after the truth began to partially enter the market. Further price declines that caused additional injury to the Class occurred upon the disclosure of additional information about the true material impact of the Company's deferred revenue scheme and the loss of CommVault's Dell partnerships on the Company's revenue. The disclosures and materializations of previously concealed risks that corrected the market prices to reduce artificial inflation caused by Defendants' material misstatements and omissions are further detailed below.

257. The truth about CommVault's rapidly decelerating software revenue growth due to the loss of its partnerships with Dell partially emerged when the Company announced its third quarter of fiscal 2014 financial results. On January 29, 2014, before the start of the trading day, CommVault announced that the Company had recognized $4.1 million in deferred software revenue for the quarter, and that total revenues from CommVault's Dell partnerships were down 28% year-over-year and 38% sequentially. CommVault's January 29, 2014 disclosures about its recognition of deferred software revenue and the decline in its total revenues generated from Dell surprised the market and caused the price of CommVault's stock to drop significantly, from a closing price of $76.10 per share on January 28, 2014 to a closing price of $69.44 on January 29, 2014 – a decline of nearly 9%.

258. However, due to the Individual Defendants' public reassuring statements detailed above at Section VII.E., including that deferred revenue is "not a good indicator of our licensed revenue growth" and "[w]e continue to meet our stated objectives in transitioning away from Dell to other distribution partners," the price of CommVault stock remained artificially high.

259. Indeed, analysts, echoing Defendants' reassuring comments, reported that CommVault's deferred software revenue balance was not a good indicator of the Company's growth and the Company had replaced Dell as a business partner, and recommended that investors continue to buy shares of CommVault stock. For example, on January 29, 2014, William Blair issued an analyst report entitled, *Deferred Revenue Fears Overblown, in Our View*, observing that deferred revenue "will fluctuate quarter to quarter, but it is not deemed to be a good indicator of license revenue growth by management."

260. Likewise, in another analyst report dated January 29, 2014, Lake Street Capital Markets reiterated its "BUY" rating, stating, "The company is executing well and the 20% y/y growth rate says it is likely to continue taking share from incumbents." Lake Street Capital Markets further noted with respect to Dell that "[i]n Q3 the company saw its Dell business start to tail off," but concluded, "Arrow Steps in Nicely For Dell."

261. Similarly, analysts at Macquarie (USA) Equities Research issued a report on January 29, 2014, which stated, "we are inclined to believe that CVLT can revive its growth momentum in 4Q FY14" due to the Defendants' above-discussed representations.

262. Accordingly, CommVault's reassuring statements allowed the impact of the Company's misstatements and omissions to continue, and worsen, throughout the remainder of the Class Period. For example, on February 11, 2014, Defendant Carolan stated that "visibility actually increased" and "the business had good momentum leaving the quarter." Defendant

Carolan further represented, "things were accelerating, not decelerating in relative terms." However, as was ultimately disclosed, these statements were materially false and misleading because when the Company ran out of deferred software revenue in the fourth quarter of fiscal 2014, it was no longer able to hide the fact that software revenue growth was decelerating and as a result, reported software revenue growth substantially declined.

263. Finally, on April 25, 2014, before the opening of the market, CommVault disclosed the full truth about CommVault's decelerating software revenue growth and the impact of the loss of its Dell partnerships on that revenue. That day, CommVault announced that its fiscal fourth quarter profit had dropped 7.8% due to significant deceleration in software revenue growth, and that software revenue decelerated to just 10% year-over-year, half of the 20% investors had been led to expect by Defendants. As explained by Defendant Hammer, "lower than forecast results in the Americas . . . negatively impacted our license revenue growth for the quarter." Moreover, Defendant Hammer confirmed, "the additional effort it took to move away from Dell" contributed to the Company's declining revenue growth in the Americas, and constituted "a distraction in the Americas." Defendant Hammer further acknowledged that the loss of Dell revenue "negatively impacted the Americas in the near term."

264. As noted above, financial analysts were surprised and disappointed by Defendants' April 25, 2014 disclosures. For example, Lake Street Capital Markets lowered its price target on CommVault by over 33%, and published an analyst report noting that "CommVault posted a disappointing fourth quarter with revenue 2.0% below consensus." Analysts at Jefferies Group similarly lowered their price target on CommVault by nearly 20%, stating that based on the Company's disclosures, investors should now expect software revenue deceleration through the fiscal year 2015. Moreover, analysts at Macquarie (USA) Equities Research also reduced their

price target on CommVault by nearly 33%, reporting that the Company had acknowledged that the loss of Dell's business "has not been adequately compensated by distribution partners such as Arrow."

265. As a result of these disclosures, the price of CommVault stock plummeted by more than 30% in one day – from a closing price of $68.58 per share on April 24, 2014 to a closing price of $47.56 per share on April 25, 2014.

266. Indeed, the Company's April 25, 2014 disclosures were so surprising that they were widely carried by the news media. For example, shortly after CommVault announced its fourth quarter fiscal 2014 earnings results, *The Wall Street Journal* published an article at 10:01 a.m. Eastern Time called "CommVault Shares Tumble as Revenue Misses Expectations," reporting on the 7.8% drop in the Company's fourth-quarter profit and the drop in software revenue growth, and further quoting Defendant Hammer's remarks in the April 25, 2014 press release that the Company had experienced "mixed results" in the quarter, including lower-than-forecast results in the Americas, which had hurt license revenue growth. *The Wall Street Journal* further observed, "Shares tanked in early trading, falling below $50 per share for the first time since summer 2012."

267. Thereafter, at 12:28 p.m. Eastern Time, *Forbes* published an article entitled, "Oversold Conditions for CommVault Systems (CVLT)," which stated, in relevant part, "In trading on Friday, shares of CommVault Systems Inc (NASD: CVLT) entered into oversold territory … after changing hands as low as $47.50 per share."

268. Similarly, on April 25, 2014 at 2:59 p.m. Eastern Time, in an article called "Why CommVault Systems, Inc. Shares Got Destroyed," *The Motley Fool* reported, "Shares of CommVault Systems (NASDAQ: CVLT) have lost over 29% of their value today, falling back to levels not seen in nearly two years, after the information-management specialist reported fiscal

fourth-quarter results that disappointed investors on the top line." The article further reported, in relevant part, that "CommVault missed revenue expectations" due to "weakness in the Americas."

269. Accordingly, the decline in CommVault's stock price was a direct and proximate result of the Defendants' scheme being revealed to investors and to the market. The timing and magnitude of CommVault's stock price decline negate any inference that the economic losses and damages suffered by Lead Plaintiff and other members of the Class were caused by changed market conditions, macroeconomic factors, or even Company-specific facts unrelated to the Defendants' fraudulent conduct.

IX. THE INAPPLICABILITY OF THE STATUTORY SAFE HARBOR

270. The statutory safe harbor applicable to forward-looking statements under certain circumstances does not apply to any of the false or misleading statements pleaded in this Complaint. Many of the statements complained of herein were historical statements or statements of current facts and conditions at the time the statements were made. Further, to the extent that any of the false or misleading statements alleged herein can be construed as forward-looking, the statements were not accompanied by any meaningful cautionary language identifying important facts that could cause actual results to differ materially from those in the statements.

271. Alternatively, to the extent the statutory safe harbor otherwise would apply to any forward-looking statements pleaded herein, Defendants are liable for those false and misleading forward-looking statements because at the time each of those statements was made, the speakers knew the statement was false or misleading, or the statement was authorized or approved by an executive officer of CommVault who knew that the statement was materially false or misleading when made.

X. THE PRESUMPTION OF RELIANCE

272. Lead Plaintiff and other members of the Class relied, and are entitled to have relied, upon the integrity of the market prices for CommVault's common stock, and are entitled to a presumption of reliance on Defendants' materially false and misleading statements and omissions during the Class Period.

273. Lead Plaintiff is entitled to a presumption of reliance on Defendants' material misrepresentations and omissions pursuant to the fraud-on-the-market doctrine because during the Class Period:

(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 registered issuer, CommVault filed periodic public reports with the SEC and the NASDAQ Stock Market;

(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;

(d) The market reacted promptly to public information disseminated by CommVault;

(e) CommVault securities were covered by numerous securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and customers of their respective firms, including, but not limited to: Lake Street Capital Markets; Craig-Hallum Capital Group LLC; Piper Jaffray; William Blair & Company, L.L.C.; RBC Capital Markets LLC; Credit Suisse; Jefferies Group, Inc.; JMP Securities LLC; Raymond James & Associates; Lazard Capital Markets; BMO Capital Markets Corp.; Stifel Nicolaus; Macquarie (USA) Equities Research; Needham & Company; and Pacific Crest Securities. Each of these reports was publicly available and entered the public marketplace;

(f) The material representations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of CommVault common stock; and

(g) Without knowledge of the misrepresented or omitted material facts alleged herein, Lead Plaintiff and other members of the Class purchased or acquired CommVault common stock between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed.

274. In the alternative, Lead Plaintiff is also entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against Defendants are predicated upon omissions of material facts which there was a duty to disclose.

XI. CLASS ACTION ALLEGATIONS

275. Lead 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.

276. 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. As of January 21, 2015, CommVault had approximately 44.9 million shares of common stock outstanding, owned by hundreds or thousands of investors.

277. 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 that predominate over questions affecting individual Class members include:

(a) Whether Defendants violated the Exchange Act;

(b) Whether Defendants omitted or misrepresented material facts about CommVault's software revenue growth, the impact of the loss of its partnerships with Dell, and its revenue-recognition practices;

(c) Whether Defendants' statements omitted material facts about CommVault's software revenue growth, the impact of the loss of its partnerships with Dell, and its revenue-recognition practices 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 omissions about CommVault's software revenue growth, the impact of the loss of its partnerships with Dell, and its revenue-recognition practices were false and misleading;

(e) Whether the price of CommVault common stock was artificially inflated as a result of Defendants' false statements and omissions;

(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.

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

279. Lead Plaintiff will adequately protect the interests of the Class and has retained counsel experienced in class action securities litigation. Lead Plaintiff has no interests that conflict with the interests of the Class.

280. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Joinder of all Class members is impracticable. Additionally, the damages suffered by some individual Class members may be small relative to the burden and expense of individual litigation, making it practically impossible for such members to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

281. The names and addresses of those persons and entities that purchased or acquired CommVault's common stock during the Class Period are available from the Company's transfer agent(s). Notice may be provided to such purchasers and record owners via first-class mail and publication using techniques and a form of notice similar to those customarily used in securities class actions.

XII. CAUSES OF ACTION

COUNT I

VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 (Against All Defendants)

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

283. 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 Lead Plaintiff and other Class members, as alleged herein; and (ii) cause Lead Plaintiff and other members of the Class to purchase CommVault common stock at artificially inflated prices.

284. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and omitted to state material facts necessary to make the statements made 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.

285. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and 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.

286. During the Class Period, Defendants made the false statements specified above, which they knew or recklessly disregarded to be false and misleading in that the statements

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.

287. 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.

288. Lead 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. Lead 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.

289. As a direct and proximate result of Defendants' wrongful conduct, Lead 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.

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

COUNT II

VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT
(Against The Individual Defendants)

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

292. 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 awareness of the Company's operations, direct involvement in the day-to-day

operations of the Company, and 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.

XIII. PRAYER FOR RELIEF

WHEREFORE, Lead 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 Lead 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 Lead 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.

XIV. JURY DEMAND

Lead Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: February 5, 2016

s/ James E. Cecchi
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Additional Counsel for Lead Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February 2016, I electronically filed a copy of the foregoing Second Amended Class Action Complaint and Demand for Jury Trial, along with Exhibits A, B, and C thereto, with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

s/ James E. Cecchi
James E. Cecchi

NY/959725/2

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re CommVault Systems, Inc. Securities Litigation	: Master File No. 14-5628 (PGS)

Declaration of Harvey L. Pitt

I, Harvey L. Pitt, an attorney admitted to practice, declares under penalty of perjury, pursuant to 28 U.S.C. §1746:

A. Introduction

1. I have been retained by Bernstein Litowitz Berger & Grossmann LLP, Counsel for the Class and for Lead Plaintiff Arkansas Teacher Retirement System, in the above-captioned action, to express my opinions and experiences regarding the improper and fraudulent practice of some companies, known as earnings management—that is, the misuse of Generally Accepted Accounting Principles ("GAAP") to mislead shareholders (or other corporate stakeholders) in order to create an artificial and misleading impression, or mask the true nature and quality, of the companies' earnings.[1]

2. As relevant to this proceeding, earnings management frequently utilizes a technique most commonly called "cookie jar" accounting or "cookie jar reserves."[2] The use of "cookie jar accounting"

[1] *See, e.g.*, P. Healy & J. Wahlen, "A Review of the Earnings Management Literature and its Implications for Standard Setting," ACCOUNTING HORIZONS (1998), at p. 6, available at http://homepages.rpi.edu/home/17/wuq2/public_html/restatement%20reference/healy%201999.pdf ("Healy & Wahlen")

[2] *See, e.g.*, W. Schuetze, "Cookie Jar Reserves," Speech at the Nineteenth Annual Ray Garret, Jr., Corporate and Securities Law Institute (Apr. 22, 1999), available at https://www.sec.gov/news/speech/speecharchive/1999/spch276.htm. Mr. Schuetze was Chief Accountant of the Division of Enforcement of the Securities and Exchange Commission ("SEC") at the time he delivered this address. He previously served (1992-95) as the SEC's Chief Accountant. *See* Wikipedia, "Walter P. Schuetze," https://en.wikipedia.org/wiki/Walter_P._Schuetze.

to defraud investors is not new; it has long been recognized in accounting literature[3] and alleged in SEC fraud cases.[4]

3. Specifically, I was asked to apply my experience—as a regulator, Public Company Accounting Oversight Board ("PCAOB") advisor, and counselor to (and member of) public company boards, audit committees and special board committees—to the Complaint's allegations that the defendants, CommVault Systems, Inc. ("CommVault" or "Company") and two senior managers, Robert Hammer and Brian Carolan (respectively CommVault's CEO and CFO), defrauded investors by utilizing "cookie jar" reserves. This Declaration sets forth the bases for my opinion that the specific practice of utilizing "cookie jar" reserves alleged here—as a means of creating false or misleading impressions about the company's actual results of operation—if proved at trial, constitutes fraud.

4. The views I express are solely my own, based upon my nearly fifty years of experience with accounting-related reporting obligations of public companies, and were drafted solely by me. Plaintiffs' counsel have agreed to compensate me at my normal hourly rate for similar matters ($1,000), based solely upon the hours actually expended. My compensation is not dependent upon the outcome of this proceeding, the contents of this Declaration, or any testimony I may be asked to provide. I respectfully reserve the right to revise or supplement this Declaration if I later should become aware of additional relevant information.

B. Professional Qualifications[5]

5. I am an attorney at law in good standing, admitted to practice in the State of New York and the District of Columbia. In 2003, I founded Kalorama Partners ("KP"), a global strategic business consulting firm, specializing in corporate governance, regulatory, accounting, economic, and risk/crisis issues, where I am the Chief Executive Officer and a Managing Director. I am also the CEO of Kalorama Legal Services, PLLC,

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[3] *See, e.g.*, sources cited in nn. 1 & 2, *supra*.

[4] My recent search of the SEC's website identified nearly 100 references to enforcement actions, SEC speeches and SEC rulemaking discussing the fraudulent nature of "cookie jar reserves." *See* *http://secsearch.sec.gov/search?utf8=%E2%9C%93&affiliate=secsearch&query=cookie+jar+reserves&commit=Search*.

[5] A copy of my current CV is annexed as Exhibit A.

KP's law firm affiliate. The Kalorama Firms offer strategic business and related legal advice to corporations and financial services firms, their boards of directors and audit, compensation, governance, risk management and compliance committees.

6. I graduated from the City University of New York (Brooklyn College) in 1965 with a BA degree, and received a JD degree from St. John's University School of Law in 1968. In 2002, I was awarded an LL.D. (Hon.) from St. John's University, and in 2003, I was awarded the Brooklyn College President's Medal of Distinction. I have been admitted in, and have argued before, all federal appellate courts (other than the Federal Circuit Court of Appeals), as well as the U.S. Supreme Court.

7. Prior to founding the Kalorama Firms, I served as the SEC's twenty-sixth Chairman (2001-03). In that capacity, I oversaw the myriad functions performed by the SEC, including establishment of enforcement, accounting and disclosure policies, as well as the adoption of rules and regulations governing the conduct of those engaged in the Nation's capital markets and those who issue securities through those markets. During my tenure as SEC Chairman, among other things, I oversaw the SEC's response to market disruptions resulting from the terrorist attacks of 9/11, created the SEC's "real time enforcement" program[6]—a policy to make the SEC's enforcement initiatives more efficient and effective for the protection of investors—and led the SEC's unanimous adoption of dozens of rules implementing the Sarbanes-Oxley Act of 2002 ("S-Ox"), [7] in response to the corporate and accounting crises generated by the excesses of the 1990s. I also presided over the Agency's decision to bring enforcement actions alleging the use of earnings management devices, include through the use of "cookie jar accounting" to mislead and deceive public investors.[8]

8. My service as SEC Chairman was my second tour of duty at the SEC. My first tour of duty commenced after graduation from law

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[6] For a description of the SEC's "real time" enforcement policy, *see* S. Cutler, "*Remarks at the Glasser LegalWorks 20th Annual Fed. Secs. Inst.*," (Feb. 15, 2002), available at https://www.sec.gov/news/speech/spch538.htm.

[7] Pub. L. 107-24, 116 Stat. 745 (Jul. 30, 2002).

[8] *See, e.g., SEC* v. *Xerox Corp.*, Civ. Action No. 02-272789 (DLC) (Apr. 11, 2002 S.D.N.Y.) complaint, available at https://www.sec.gov/litigation/complaints/complr17465.htm.

school, and spanned more than a decade (1968-78), the last three years of which I served as General Counsel, the SEC's Chief Legal Officer. After my first tour of duty at the SEC, for nearly a quarter of a century (1978-2001), I was a senior corporate partner at (and for several years was Co-Chairman of) the international law firm Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"). My practice covered all aspects of corporate, financial services and securities law, and involved my direct representation of most major capital markets participants, including each of the original "Big Eight" accounting firms and the American Institute of Certified Public Accountants.[9]

9. In addition to serving as CEO of the Kalorama Firms, I am also:

- An independent director of root9B Technologies Inc., a public company specializing in Cybersecurity and Regulatory Risk Mitigation solutions, where I am a member of the Audit Committee;

- An independent director of CQS (UK) LLP and CQS Investment Management Ltd., managers of international alternative asset management funds;

- An independent director of the international hedge funds of Paulson & Co., Inc., and a member of those funds' Audit Committees; and

- A member of the Advisory Council of the PCAOB, a not-for-profit corporation created by S-Ox to oversee the audits of public companies and securities broker-dealers for the protection of investors and the public.

10. Since 2007, I have testified or provided expert reports in ten proceedings regarding the application of the federal securities laws.[10] I

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9 For much of the seventies and eighties, there were eight major public accounting firms—Arthur Andersen, Coopers & Lybrand, Deloitte Haskins & Sells, Ernst & Whinney, Peat Marwick Mitchell, Price Waterhouse, Touche Ross and Arthur Young. *See, e.g.*, D. Katz, "The Big Eight," CFO.com (Dec. 31, 2002), http://ww2.cfo.com/accounting-tax/2002/12/the-big-eight/. Today, the "Big Eight" have morphed into the "Big Four," as a result of mergers and the implosion of Arthur Andersen, fallout of the Enron scandal.

10 A list of these matters is annexed as Exhibit B.

am a frequent speaker and writer on the application of the federal securities laws,[11] and have taught a number of courses, and given numerous lectures, at various business and law schools, on the application of the federal securities laws, with an emphasis on financial disclosure obligations.[12]

11. Plaintiff's allegations, my government regulatory experience with financial disclosure obligations, my counsel to, and representation of, corporate boards, managements, and independent accounting firms, my service on corporate and other audit committees, and my current experience providing financial disclosure, governance and compliance advice (and internal corporate reviews of those matters) provide the basis for my views on customary procedures and understandings regarding earnings management utilizing "cookie jar" Accounting.

C. Earnings Management and "Cookie Jar" Accounting

12. At the heart of this proceeding is the question whether the plaintiff's allegations, taken as true,[13] state a recognized claim for fraud under the federal securities laws and authoritative accounting literature. Specifically, plaintiff alleges that defendants engaged in earnings management by using a "cookie jar" of deferred software revenue and made concomitant false statements (or omitted material facts) concealing that conduct, misleading public investors and CommVault shareholders to their detriment about the Company's decelerating growth and the materially adverse consequences of CommVault's loss of its primary business partner, Dell, Inc. ("Dell"), which had accounted for 20% of CommVault's revenues.[14] These allegations, including the use of a "cookie jar" of deferred software revenue, if proved at trial, have long

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[11] A list of my recent articles and published speeches is annexed as Exhibit C.

[12] The schools at which I have taught courses or given lectures are listed on Exhibit D.

[13] As this Court noted in ruling on Defendant's Motion to Dismiss, in considering the motion, "the Court is required to accept as true all allegations in the complaint, and all reasonable inferences that can be drawn therefrom, and to view them in a light most favorable to the non-moving party." Court's Opinion On Motion To Dismiss, (Oct. 30, 2015) ("Motion to Dismiss Op."), at p. 2, lines 18-25. In preparing this Declaration, I viewed the Second Amended Class Action Complaint's allegations similarly.

[14] *See, e.g.*, Second Amended Class Action Complaint (Feb. 5, 2016) ("Compl."), at ¶1.

been understood to state a *prima facie* claim of fraud under the federal securities laws, resulting in judgments—either through litigation or settlement—against many of the Nation's largest public companies.[15]

13. My immediate predecessor as SEC Chairman, Arthur Levitt, aptly characterized earnings management as

> [A] game among market participants. . . . A game that runs counter to the very principles behind our market's strength and success. . . . As a result, . . . we are witnessing an erosion in the quality of earnings, and therefore, the quality of financial reporting. Managing may be giving way to manipulation; Integrity may be losing out to illusion.[16]

14. As noted, earnings management describes the improper manipulation of data in financial reports to mislead shareholders about a company's actual performance.[17] In many cases—as is alleged here[18]—earnings management involves the manipulation of company earnings towards a pre-determined target, reflecting company management's desire to present to the public a record of stable earnings, a practice known as "earnings smoothing."[19] The reasons that prompt public

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15 *See* n. 4, *supra*. Among the public companies referenced on the SEC's website as having engaged in fraud by utilizing "cookie jar" accounting are Dell, Inc., Microsoft Corp., WorldCom Inc., Enron Corp., Bristol-Myers Squibb Co., Diebold, Inc., Sunbeam Corp., Computer Sciences Corp., Xerox Corp., ConAgra Foods, Inc., Symbol Technologies, Inc., Sun Communities, Inc., Veritas Software Corp., Paracelsus Healthcare Corp., Beazer Homes USA, Inc., Bankrate, Inc., Koninklijke Ahold N.V. (Royal Ahold), Nicor, Inc., HBO & Co., ebix.com, inc., Fine Host Corp., and AIG, Inc.

16 *See* A. Levitt, "The 'Numbers Game,'" Remarks before the NYU Center for Law & Bus. (Sept. 28, 1998), available at https://www.sec.gov/news/speech/speecharchive/1998/spch220.txt.

17 *See* Healy & Wahlen, *supra* n. 1. Certain legitimate management decisions regarding the application of GAAP can have the effect of managing earnings. But, as used by the SEC and in the accounting literature, and as applicable here, the phrase connotes improper manipulative behavior by corporate managers, and invariably involves a violation of GAAP.

18 Compl. ¶¶54, 57, 93.

19 *See, e.g.*, A. Goel & A. Thakor, "Why Do Firms Smooth Earnings?," J. Bus. Earnings (2003), available at http://apps.olin.wustl.edu/faculty/thakor/Website%20Papers/Why%20Do%20Firms%20Smooth%20Earnings.pdf. ("Earnings smoothing is a special case of earnings management involving . . . attempts to make earnings look less variable over time"). *See also*, Office

companies to engage in "earnings smoothing" are varied, but all have one common characteristic—the felt need to present a company's earnings in a pre-ordained fashion, rather than reporting on the results actually achieved in each fiscal year quarter. And that characteristic is a seminal definition of securities fraud.

15. "Cookie jars" of reserves or other liabilities are frequently the mechanism used by public companies to improperly manipulate their reported earnings results and achieve "earnings smoothing."[20] They have been utilized in a number of different ways, but the outcome is invariably the same (and is the product of deliberate conduct)—a fictitious or materially misleading picture of a company's actual results of operation is created, and investors and shareholders are deceived.[21] There are several methods by which "cookie jars" are created, including the following:

- GAAP requires public companies to set aside reserves or create liabilities for certain purposes—for example, revenue that is pending recognition may be deferred (creating a balance sheet liability) until one or more criteria for revenue recognition are satisfied,[22] the payment of anticipated claims by an insurance company, or loan loss reserves by a bank to provide funds in the event outstanding loans are not all paid back.[23] In other

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of Federal Housing Enterprise Oversight, REPORT OF THE SPECIAL EXAMINATION OF FANNIE MAE (May 2006), at p. 6, available at http://online.wsj.com/public/resources/documents/ofheo20060523.pdf ("The extreme predictability of the financial results reported by Fannie Mae from 1998 through 2003, and the ability to hit EPS targets precisely each quarter, were illusions deliberately and systematically created by senior management . . . [who] misapplied GAAP to accomplish improper earnings management").

20 *See, e.g.*, W. Schuetze, "Cookie Jar Reserves," *supra* n. 2; A. Levitt, "The 'Numbers Game,'" *supra* n. 15. *See also*, J. Weil, "'*Cookie Jar' Accounting Trick Sweetens Corporate Results*," Wall St. Jl. (Nov. 24, 2002), available at http://www.wsj.com/articles/SB1038072628624673748.

21 *See, e.g.*, sources cited in n. 20, *supra*.

22 *See, e.g.*, FASB Concept Statement (FASCON) No. 5, *Recognition in Financial Statements of Business Enterprises*, ¶83, available at http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1218220132773&acceptedDisclaimer=true.

23 *See, e.g.*, "*GAAP Guidelines for Contingent Liabilities*" (Oct. 25, 2015), THE MOTLEY FOOL.COM, http://www.fool.com/knowledge-center/2015/10/25/gaap-guidelines-for-contingent-liabilities.aspx.

circumstances, companies will take a reserve to cover one-time items, like restructuring costs.[24]

- The purpose of these reserves is to enable the company to pay for anticipated future expenses.

- Companies are required to have a reasonable basis for the reserves or liabilities they accrue, but there is frequently a degree of flexibility in the original process of estimating future liability.[25] Since even a good faith estimate of a reserve can subsequently prove to have been too high, the mere establishment of a reserve that proves too generous is not, without more, necessarily a violation of GAAP.

- One approach to "cookie jar" accounting, however, involves deliberately reserving more capital than the company reasonably anticipates it will need to satisfy any claims for which the reserve is established. This is an unquestioned violation of GAAP from the outset.

- Another approach involves circumstances where a company's original reserve, while determined in good faith, turns out to be significantly larger than required. When companies discover the existence of a larger reserve than necessary, excess reserves must be returned promptly. But, some companies delay the return of excess reserved capital to conceal the true results of the particular financial period in which the reserve is returned. This is also an unquestioned violation of GAAP.

16. Here, in anticipation of losing revenues generated by its critical primary business partner, Dell, and in light of the "need" to

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[24] *See* SEC, STAFF ACCOUNTING BULLETIN NO. 100, "*Restructuring and Impairment Charges*" (Nov. 24, 1999), available at https://www.sec.gov/news/extra/sab100f.htm (warning, in connection with providing guidance on restructuring activities, that the "staff has become increasingly concerned with apparent increases in inappropriate earnings management activities by public companies").

[25] *See, e.g.*, P. Farley, "*Setting Reserves with Confidence*," PARTNERING PERSPECTIVES (Summer 2011), http://www.sutherland.com/portalresource/lookup/poid/Z1tOI9NPluKPtDNIqLMRV56Pab6TfzcRXncKbDtRr9tObDdEv0JDo0!/fileUpload.name=/Setting-Reserves-With-Confidence.pdf

continue a linear trajectory of high growth, the defendants allegedly claimed—repeatedly and falsely—that the Company would continue to grow unabated and that it had successfully replaced any lost Dell revenues.[26] To create the façade of its success in maintaining that growth rate, CommVault allegedly improperly deferred revenue that should have been recognized much earlier,[27] and used that revenue to hide from investors and shareholders the actual fact that CommVault was experiencing declining revenue growth. Once CommVault's "cookie jar" of deferred software revenues was dissipated, the Company was forced to admit the truth, and its stock dropped materially—by approximately 30%.[28]

D. Conclusions

17. The allegations in the Amended Complaint set forth a picture of a Company and its management flailing to maintain a historically high rate of growth, offset the loss of its single biggest business partner, and determined to present CommVault as engaged in business-as-usual while desperate efforts were pursued to conceal the effect of the Dell loss on CommVault's bottom line. Investors are entitled to a realistic portrait of the results of operations of the companies in which they invest. When realistic reporting is replaced with manufactured fantasy reporting—presenting the Company's results of operations as management wished the Company could have realized, the Company and its management committed classic financial statement fraud.

February 5, 2016

Harvey L. Pitt

Harvey L. Pitt

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26 Compl. ¶8.

27 *Id.*, ¶9.

28 *Id.,* ¶¶16, 261-263.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

INRE COMMVAULT SYSTEMS, INC. SECURITIES LITIGATION.	*Master File No. 14-5628*

DECLARATION OF HARRIS L. DEVOR, CPA

TABLE OF CONTENTS

I. QUALIFICATIONS AND CONTEXT

I, HARRIS L. DEVOR, CPA, do hereby confirm to the Court in the above-captioned case that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a Certified Public Accountant and a partner in the accounting firm of Friedman LLP ("Friedman"). My professional experience since graduating from Temple University in 1973 has been as an accountant and auditor for large and small companies in a variety of industries. I have lectured on various topics, including financial reporting to the Securities and Exchange Commission ("SEC"), accounting, auditing, statistical sampling, and securities fraud. A copy of my resume is attached to this Declaration.

2. I have been engaged by various counsel as a consultant and/or expert dozens of times on engagements relating to the topics mentioned above and to the types of issues discussed herein.

3. I have been retained by Plaintiff's Counsel in the above-captioned matter (the "Litigation") as an expert consultant regarding accounting matters, the accounting rules surrounding the recognition of revenue and, more specifically, the manner in which Defendant CommVault, Inc. ("CommVault") is alleged to have recorded revenue during the Class Period defined by Plaintiff's Second Amended Complaint (i.e., May 7, 2013 through April 24, 2014, or the "relevant timeframe").

4. I submit this Declaration in connection with Plaintiff's Second Amended Class Action Complaint (the "SAC"). I have read and am familiar with the Amended Shareholder Complaint (the "AC") in the Litigation and a draft of the SAC, as well as the Court's Opinion on the Motion to Dismiss dated October 30, 2015 which, to the best of my knowledge, provided Plaintiff leave to amend the AC in the form of the SAC.

5. I have encountered and applied the concepts of financial reporting, including financial accrual-based accounting and revenue recognition, in the hundreds of audits in which I have participated over my 42 years as an accountant and in the numerous matters for which I have been hired as an accounting consultant or expert witness in areas relating to auditing, accounting,

financial reporting, and/or related disclosure requirements, as well as with respect to, specifically, both software revenue recognition and the concept of "cookie jar" accounting, to be discussed herein. In connection with the foregoing, I have extensive knowledge of the financial reporting and disclosure concepts and requirements embedded in the Securities Exchange Act of 1934 (and ensuing releases from the SEC), as well as those set forth within generally accepted accounting principles ("GAAP").

6. This declaration is based on my prior experience, including my understanding of the aforementioned topics, applicable and relevant accounting guidance, and my review of the pertinent public reports filed with the SEC by CommVault, as well as, among other things, my understanding of the allegations set forth in the AC and the findings of the Court's October 30, 2015 Opinion on Motion to Dismiss in the Litigation. As there has not yet been discovery in the Litigation, nor have I seen documents reflecting the actual accounting for transactions pertaining to which Plaintiff makes the allegations set forth in the AC and the SAC, the discussion set forth herein is set within the context of those allegations, and under a presumption that such allegations may be proven, with the assistance of discovery, to be true.

II. SCOPE OF ASSIGNMENT

7. Counsel for the Plaintiff in the Litigation has asked that I provide to the Court, based on my experience and education, certain specialized guidance regarding the accounting for revenue (including software revenue), CommVault's accounting for deferred revenue during the Class Period, and the concept of "cookie jar" accounting, as well as whether such treatment is proper under GAAP. I am being compensated at my normal hourly rate, based on the hours I spend devoted to this assignment. My compensation is not dependent upon the outcome of the Litigation.

III. BACKGROUND[1]

8. According to its 2014 Form 10-K, CommVault is "a leading provider of data and information management software applications and related services" that was "incorporated in 1996 as a Delaware corporation." CommVault purports to "develop, market and sell data and

[1] As gleaned primarily from public filings and the SAC.

information management software applications under the Simpana® Software brand," whose "software is built from the ground up on a single platform and unified code base for integrated data and information management." CommVault's 2014 Form 10-K also states that "[t]he Simpana platform contains licensable modules that work together seamlessly, sharing a single code and common function set to deliver Backup and Recovery, Archive, Replication, Search & eDiscovery and Analytic capabilities across physical, virtual and cloud environments," whose purported "single platform approach … is specifically designed to protect, manage and access data throughout its lifecycle in less time, at lower cost and with fewer resources than alternative solutions."

9. The SAC states, among other things, that CommVault derived about half its annual revenue from licensing its software applications, while the remaining half of the Company's revenue was derived from services and maintenance revenue. (SAC, ¶ 25). Separately, the SAC states that CommVault had "built a reputation of high growth following [its] 2006 IPO," including revenue that more than quadrupled (i.e., from approximately $109.4 million to approximately $406.6 million) from 2006 through 2012. (SAC, ¶ 7). Such information is consistent with CommVault's public filings. Additionally, as the SAC asserts, CommVault communicated to investors in its third quarter 2013 earnings call that it expected revenue to increase from approximately $500 million in fiscal 2013 to $1 billion over, as of the date of the earnings call, "the next few years." (SAC, ¶ 7). Such growth, according to analysts, would require revenue growth in the amount of approximately 20% per year until fiscal 2017.

10. Separately, the SAC highlights that a significant portion of CommVault's revenue in the period leading up to the first quarter of 2014 was generated by way of arrangements it had with Dell. Indeed, as reflected in CommVault's own forms 10-K, these arrangements caused the proportion of total CommVault revenue attributed to Dell partnerships to equal 19%, 24%, 23%, 24%, 23%, 22%, and 20% for the years ended March 31, 2007 through March 31, 2013, respectively.

11. The SAC goes on to allege, however, that, in the second half of 2012, Dell acquired certain of CommVault's competitors, which meant that Dell would purportedly decide to no

longer compensate Dell service representatives to sell CommVault's products, which would result in a decrease in the amount of CommVault's revenue emanating from its relationships with Dell. Such is the context within which Plaintiff alleges, in the SAC, that CommVault purportedly utilized a deferred revenue account as a "cookie jar" reserve through which it was able to manipulate the timing of revenue recognition in order to offset the expected impact of decreasing revenues from its Dell relationships.

12. In view of the foregoing, CommVault's public filings (the information from some of which is reflected in tables included herein, below) indicate that while the Company achieved and communicated to investors increases in software revenue of 23%, 20%, 20%, and 20% for the fourth quarter of 2013 and the first three quarters of 2014, respectively, it also increased its deferred software revenue (a liability) in the fourth quarter of 2013 from $3.1 million to $9.2 million. In the absence of any expressed explanation for such increase in deferred software revenue, and in view of events that occurred in the second and third quarters of 2014, Plaintiff has alleged in the AC and SAC that, with significant revenues from its Dell relationship still being garnered, CommVault set aside the excess of such (i.e., meaning revenues that were greater than the growth measures communicated to the public) into a deferred software revenue account (a liability account) for use at a later time.

13. CommVault's public filings indicate that, in the second and third quarters of 2014 (in the amounts of approximately $4.4 million and $4.1 million, respectively), the Company converted nearly all of such deferrals to actual revenue. The inclusion of such revenue in the financial results for the second and third quarters of 2014 allowed CommVault to meet revenue growth expectations communicated to analysts. Plaintiff has referred to such practice of setting aside revenue, for instance, in liability accounts, and using it in later periods when needed, as "cookie jar" accounting – a term of art in the accounting field that relates to the smoothing and/or manipulation of earnings.

14. I have been asked to explain the concept of "cookie jar" accounting in this context and to offer an explanation as to whether such accounting treatment (including with respect to Defendants' accounting treatment for deferred software revenue during the relevant timeframe)

allegedly afforded by CommVault would have constituted a violation of GAAP and resulted in material misstatements to CommVault's financial statements during the Class Period.

IV. DISCUSSION

15. At all relevant times during the Class Period, CommVault represented that its financial statements were prepared in accordance with GAAP. GAAP are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. SEC regulations state that financial statements filed with the SEC that are not prepared in conformity with GAAP are presumed to be misleading and inaccurate. (Regulation S-X [17 C.F.R. § 210.4-01(a)(1)]).[2]

Characteristics of Financial Reporting

16. A primary quality that renders accounting information useful to investors, creditors, and other users in their decision-making is its reliability. To be reliable, information must have representational faithfulness, verifiability, and neutrality. (*See* FASCON No. 2, *Qualitative Characteristics of Accounting Information* ("FASCON 2"), ¶¶ 58-59, 62.). In other words, reliability is: "[t]he quality of information that assures that information is reasonably free from error and bias and faithfully represents what it purports to represent." (FASCON 2, *Glossary of Terms*).

17. Accordingly, reliability implies "completeness" of information, such that "nothing material is left out of the information that may be necessary to ensure that it validly represents the underlying events and conditions." (FASCON 2, ¶ 79).

Matching Principle

18. "Recognition," which is the "process of formally recording or incorporating an item into the financial statements of an entity," is critical to ensuring that certain financial elements are

[2] The Financial Accounting Standards Board ("FASB"), the entity that holds the authority to promulgate GAAP, has codified GAAP into a numbered scheme called the Accounting Standards Codification ("ASC"), which has been adopted as the framework for financial reporting for all public filers. In addition, the FASB has issued guidance in the form of FASB Concept Statements ("FASCON"), which set the objectives, qualitative characteristics, and other concepts to be used in the development of GAAP and which reflect the underlying basis and framework for the promulgation of GAAP.

reflected in financial statements, (FASCON No. 6, *Elements of Financial Statements* ("FASCON 6"), ¶ 143). As such, FASCON 6 states that "an asset, liability, revenue, expense, gain, or loss may be recognized (recorded) or unrecognized (unrecorded)." (FASCON 6, ¶ 143).

19. Within the accounting framework underlying GAAP, and for purposes of accounting for business activities and results in accordance with GAAP, an entity must recognize items pursuant to the "accrual" method of accounting. FASCON 6 also provides that the objective of accrual accounting is to reflect transactions within the financial reporting periods to which their component costs and associated revenues relate, stating:

> Accrual accounting uses accrual, deferral, and allocation procedures whose goal is to relate revenues, expenses, gains, and losses to periods to reflect an entity's performance during a period instead of merely listing its cash receipts and outlays. Thus, recognition of revenues, expenses, gains, and losses and the related increments or decrements in assets and liabilities--including matching of costs and revenues, allocation, and amortization--is the essence of using accrual accounting to measure performance of entities. The goal of accrual accounting **is to account in the periods in which they occur** for the effects on an entity of transactions and other events and circumstances, to the extent that those financial effects are recognizable and measurable.
>
> (FASCON 6, ¶ 145; emphasis added.).

20. Thus, at the core of accrual accounting is matching revenues and expenses to both each other and the periods to which they relate, which is often referred to as the "matching principle." FASCON 6 describes this, in relevant part, as follows:

> Matching of costs and revenues is simultaneous or combined recognition of the revenues and expenses that result directly and jointly from the same transactions or other events. In most entities, some transactions or events result simultaneously in both a revenue and one or more expenses. The revenue and expense(s) are directly related to each other and require recognition at the same time.
>
> (FASCON 6, ¶ 146).

Revenue Recognition

21. ASC 605, Revenue Recognition ("ASC 605"), which incorporates certain concepts relating to revenue recognition originally set forth in FASCON No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises* ("FASCON 5"), states that in order for revenue to be recognized, it must be "earned" and "realized or realizable." (ASC 605-10-25-1, FASCON 5, ¶ 83). Revenue is "realized" or "realizable" when assets related to the revenue-earning activity are readily convertible to known amounts of cash or claims to cash. (ASC 605-10-25-1, FASCON 5, ¶ 83). Revenue is considered "earned" from delivering or producing goods, rendering services, or performing other activities that constitute an entity's ongoing major or central operations "when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues." (FASCON 5, ¶ 83).

22. Therefore, if the foregoing criteria have effectively been met, revenue should be recognized in the period when such occurs, in order to satisfy the principles encapsulated by this guidance and, more globally, the matching principle central to GAAP financial statements, as discussed above. In view of such principles, it would be improper under GAAP to defer the recording of revenues to a later period if such revenue is both (1) realized or realizable and (2) earned, especially if the purpose of such is to manipulate earnings, as discussed below.

"Cookie Jar" Accounting

23. Related thereto, the establishment and/or manipulation of so-called "cushion" or "cookie jar" reserves has been identified as an accounting practice whereby entities improperly use portions of the results from prior periods of good financial performance to set aside amounts (e.g., through the creation of accruals or reserves) that can be reversed and inappropriately recognized instead in future periods, when profits may be lower than management or market expectations. In such instances, the reversal of cookie jar accruals, improperly set up to begin with, serves to reduce expenses or increase revenue and, ultimately, allow the entity to report better (albeit misstated or manipulated) financial results in the period of reversal. In my experience, the use of such accounting manipulations is often tied to an entity's need to achieve and/or report pre-determined financial measures (such as thresholds of revenue or net income, for instance) that may have been communicated to expectant investors or the public as a whole.

24. In a well-known speech given on September 28, 1998, then SEC Chairman Arthur Levitt described five common "gimmicks" used by public companies to, in fact, meet investor earnings expectations. It was the expressed belief of Chairman Levitt that the use of such gimmicks ultimately results in financial reports that more reflect the desires of management than the underlying financial performance of a company, in violation of GAAP.

25. One of the gimmicks discussed by Chairman Levitt was the use of "cookie jar[]" accruals. Chairman Levitt stated the following regarding this gimmick:

> A third illusion played by some companies is using unrealistic assumptions to estimate liabilities for such items as sales returns, loan losses or warranty costs. In doing so, they stash accruals in cookie jars during the good times and reach into them when needed in the bad times.
>
> Levitt, Arthur. (1998) *The Numbers Game.* Retrieved from: https://www.sec.gov/news/speech/speecharchive/1998/spch220.txt

26. As set forth above, Plaintiff alleges that Defendants employed such a practice during the Class Period and that, by virtue of such, were able to report revenue growth measures that equaled estimates that had been communicated to the public.

27. The practice of, in periods of positive financial results – i.e., results that exceed estimates that have been communicated to the public or investors – setting aside revenue that should be recorded, and delaying to record it in later periods, when results may not be as favorable without this fictitious revenue, constitutes the "cookie jar" accounting mentioned by Chairman Levitt in the excerpt above and discussed herein. Such practice was common in the 1990's and 2000's, when economic times allowed for earning manipulation opportunities. The revenue at issue here, in the case of CommVault, was initially recorded on the Company's books as a liability, and later taken into revenue. Such practice is improper under the accounting rules if it does not adhere to basic principles of accrual accounting –mandated by the SEC – including, specifically, revenue recognition criteria.

28. In my experience, I have witnessed and opined upon the use of "cookie jar" accounting a number of times. For the reasons set forth below, and in view of the guidance discussed above, such practice is improper. There are indications in the public filings made by CommVault during the relevant timeframe that are consistent with such a practice having been employed. If proven to have occurred, such practice is in violation of GAAP.

CommVault's Deferral of Software Revenue

29. Throughout the Class Period, CommVault represented that it recognized software revenue upon delivery using what is referred to as the "residual method," which purported to mirror the applicable accounting guidance governing revenue recognition, including for software-related revenue. In the fourth quarter of fiscal 2013, CommVault achieved significant reported revenue growth, and separately deferred significant and extraordinary[3] amounts of additional software revenue. The following table, which is also included in the AC, depicts the amounts CommVault reported for deferred software revenue for the years 2009 through 2014:

[3] I.e., compared to what it had recorded in connection with its prior 4 years of operations.

Reporting Period	Deferred Software Revenue	Amount of Change from Prior Quarter
FY 2009		
Q1 2009 (6/30/08)	$166,000	$138,000
Q2 2009 (9/30/08)	$161,000	-$5,000
Q3 2009 (12/31/08)	$126,000	-$35,000
Q4 2009 (3/31/09)	$49,000	-$77,000
FY 2010		
Q1 2010 (6/30/09)	$176,000	$127,000
Q2 2010 (9/30/09)	$120,000	-$56,000
Q3 2010 (12/31/09)	$197,000	-$77,000
Q4 2010 (3/31/10)	$578,000	-$381,000
FY 2011		
Q1 2011 (6/30/10)	$722,000	$144,000
Q2 2011 (9/30/10)	$533,000	-$189,000
Q3 2011 (12/31/10)	$377,000	-$156,000
Q4 2011 (3/31/11)	$237,000	-$140,000
FY 2012		
Q1 2012 (6/30/11)	$1,844,000	$1,607,000
Q2 2012 (9/30/11)	$2,599,000	$755,000
Q3 2012 (12/31/11)	$1,443,000	-$1,156,000
Q4 2012 (3/31/12)	$3,764,000	$2,321,000
FY 2013		
Q1 2013 (6/30/12)	$826,000	-$2,938,000
Q2 2013 (9/30/12)	$1,680,000	$854,000
Q3 2013 (12/31/12)	$3,134,000	$1,454,000
Q4 2013 (3/31/13)	$9,193,000	$6,059,000
FY 2014		
Q1 2014 (6/30/13)	$9,176,000	-$17,000
Q2 2014 (9/30/13)	$4,700,000	-$4,476,000
Q3 2014 (12/31/13)	$603,000	-$4,097,000
Q4 2014 (3/31/14)	$666,000	$63,000

30. As can be seen, the balance in CommVault's deferred software revenue account had been less than $3.1 million as of the end of the last several reporting periods preceding the end of 2013. In the fourth quarter of 2013, however, this balance increased to nearly $9.2 million. It is not the existence of deferred revenue that is improper on its face, but the sudden increase in the size of the liability without any communicated change in the products sold or services being performed by CommVault, as well as the timing of such (i.e., in view of the impending loss of Dell business and revenue growth in prior periods that well-exceeded analyst estimates), that is

notable to me. As indicated in the table above, CommVault had never previously deferred such magnitude of software revenue.

31. The increase in the deferred software revenue balance coincided directly with CommVault's significant revenue growth prior to the Class Period, a period during which the balance of deferred software revenue had been minimal (or significantly less than at the end of 2013). It is also relevant to note that, as a result of Defendants' shift of sizable amounts into actual revenue during the second and third quarters of 2014, the deferred software revenue liability balance did not remain stable, as if new transactions, with new amounts of deferred software revenue, were occurring. Therefore, the fact that additional deferred software revenue was apparently not recorded in the first, second, or third quarters of 2014 makes the build-up and the ensuing take-down of the balance all the more notable. Instead, once the large takedowns occurred in the second and third quarter of 2014, the balance had nearly dissipated. After the reduction of the liability and the recording of revenue in the second and third quarters of 2014, the balance of deferred software revenue had decreased to approximately $600,000.

32. Plaintiff's allegations as to the apparent impropriety of the accounting, therefore, is made further plausible by the fact that the recording of such large balances of deferred revenue, and the later reduction of such balances to the benefit of reported revenue, was not CommVault's historical practice and was, thus, unprecedented (and unexplained).

33. For instance, Defendants' disclosed accounting policies with respect to revenue and the possible deferral of such state the following, in relevant part:

> Deferred revenues represent amounts collected from, or invoiced to, customers in excess of revenues recognized. This results primarily from the billing of annual customer support agreements, as well as billings for other professional services fees that have not yet been performed by the Company and billings for license fees that are deferred due to one of the recognition criteria not being met. The value of deferred revenues will increase or decrease based on the timing of invoices and recognition of software revenue. The Company expenses internal direct and incremental costs related to contract acquisition and origination as incurred.

34. As reflected in the SAC, however, individuals who worked at CommVault during the relevant timeframe stated that deferred revenue was not solely established under such premises, nor was it properly treated. Specifically, multiple people stated that Defendants improperly deferred the timely recognition of this revenue to make it appear, in later periods, that the Company's revenue had continued to grow as fast as expected when in actuality, revenue was decelerating. For example, one individual is quoted as saying "CommVault was skimming revenue off deferred revenue just to make the numbers look good," while another was referenced as asserting that "when the Company had enough revenue for the current quarter, it would roll some over to the next quarter so that the next quarter would look good." Without proffering any position as to the veracity of such statements, I am able to state that those statements would be consistent with both my understanding of what "cookie jar" accounting is and how it is used by companies to impact financial results. Moreover, such statements are consistent with the nature of and characteristics apparent in the growth and decline of the deferred revenue balances reflected in CommVault's public filings during the relevant timeframe.

35. Establishing significant amounts of deferred revenue on presumably (in the absence of any disclosures by the Company to the contrary[4]) the same contracts for which no such deferred revenue has previously been recorded would imply the Company did not record such transactions as revenue when the license was delivered. In later periods, if such liability was reduced under the premise that the revenue recognition criteria had ultimately been satisfied, the journal entry to do so would cause the recognition of revenue in that later period. Ultimately, in the second and third quarters of 2014, CommVault appears to have done just that, recording approximately $4.4 million and $4.1 million of previously-deferred revenue (a liability) as actual revenue.

36. CommVault's public filings also indicate that, without the recognition (in the second and third quarters of fiscal year 2014) of previously-deferred revenue, CommVault would not have been able to report the software revenue growth percentages (i.e., 20%) for those quarters that it had communicated to the market. This means that organic growth in those quarters, which had

[4] To the best of my knowledge, CommVault did not disclose /discuss/explain a change in its products, services or customer terms, beginning in the fourth quarter of 2013, which would indicate that deferred revenue should have suddenly increased to a significant degree.

never previously been buttressed by deferred revenue, was much lower than expected. The chart below reflects this fact:[5]

Reporting Period	**Total Deferred Software Revenue on the Balance Sheet**	**Total Software Revenue**	**Year-Over-Year Software Revenue Growth**	**Range of Analyst Estimates for Software Revenue**
Q4 2013 (ended March 31, 2013)	$9,193,000	$72,100,000	Up 23%	$66,000,000 to $71,100,000
Q1 2014 (ended June 30, 2013)	$9,176,000	$65,300,00	Up 20%	$63,500,000 to $66,000,000
Q2 2014 (ended September 31, 2013)	$4,700,000	$70,800,000	Up 20%	$69,600,000 to $70,471,000
Q3 2014 (ended December 31, 2013)	$603,000	$79,200,00	Up 20%	$73,000,000 to $77,032,000

37. Similarly, the chart indicates that when CommVault increased and maintained its highest balance of deferred revenue liability (i.e., in the fourth quarter of 2013 and the first quarter of 2014), it did not appear to take into revenue any significant amounts. Contrasted with the second and third quarters of 2014, more than $4 million of deferred revenue liability was re-characterized as revenue and the total liability balance nearly dissipated in those quarters, as noted above.

38. Furthermore, the balance of deferred software revenue as of the end of fiscal 2013 - $9.2 million - was the largest balance of deferred software revenue carried by the Company since becoming a public company. Both the increase in and the size of the balance were extraordinary and unprecedented., The Company provided no explanation regarding the nature of the software sales from which these revenue deferrals arose, with no explanation as to why the increase

[5] *See* SAC, ¶ 106.

incurred in the fourth quarter of 2013, primarily, when there was not a particular change in CommVault's transactions or its business.

39. Therefore if, as certain individuals who worked at CommVault during the Class Period stated, CommVault was "skimming revenue off deferred revenue just to make the numbers look good," CommVault improperly utilized what is known in the accounting and investing worlds as "cookie jar" accounting, in violation of GAAP.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on,

2/4/16

Date

Harris L. Devor, CPA

EXHIBIT C

CONFIDENTIAL WITNESS APPENDIX[1]

CW No.	Position & Tenure	Job Description/Relevant Responsibilities
1	Director of Strategic Partner Development (October 2011 – September 2014)	CW1 was responsible for developing CommVault's relationship with NetApp, an alternative distribution partner that Defendants represented would replace Dell. Before working at CommVault, CW1 worked at NetApp for ten years. At CommVault, CW1 reported to Dave West, Senior Vice President, Worldwide Marketing & Business Development through March 2014, when West left that position. Dave West reported to Ron Miiller, Senior Vice President, Worldwide Sales, who, in turn, reported to Defendant Hammer. CW1 attended the July 2013 meeting in Chicago of CommVault senior executives, including Defendants Carolan and Hammer, which was held to address CommVault's revenue deceleration for fiscal year 2014 due to the loss of its partnerships with Dell. CW1 raised questions and concerns regarding Defendants' recognition of deferred revenue, and was subsequently laid off.

[1] The information contained in this Appendix is based on the information provided by the Confidential Witnesses in connection with Lead Plaintiff's investigation in this matter.

CW No.	Position & Tenure	Job Description/Relevant Responsibilities
2	Director of Sales, Western Division (July 2011 – October 2013)	CW2 reported to Rick Baumgart, Vice President of Western Sales. CW2 managed a team of account executives that sold to “mid-enterprise” accounts. Before joining CommVault, CW2 worked for EMC, which also had a relationship with Dell, in back up recovery system sales. At CommVault, CW2 did a lot of business with Dell by partnering with Dell on mid-enterprise accounts. CW2 described the Company’s inability to find replacement distribution partners for Dell after Dell transitioned away from CommVault in 2013, including problems with NetApp, Hitachi, Arrow, and CDW. CW2 attended the July 2013 meeting in Chicago of CommVault senior executives, including Defendants Carolan and Hammer, which was held to address CommVault’s revenue deceleration for fiscal year 2014 due to the loss of its partnerships with Dell.
3	Regional Sales Director, Southeast (August 2010 – March 2014)	CW3 managed seven sales representatives in an eight-state territory in the Southeast. CW3 described problems with CommVault’s sales force beginning in 2013 as a result of Dell’s transition away from CommVault. Among other issues, CW3 stated that approximately half of the Company’s sales representatives quit in 2013, and that the Company imposed unrealistically high sales quotas.

CW No.	Position & Tenure	Job Description/Relevant Responsibilities
4	Territory Account Manager, Florida Region (February 2011 – March 2014)	CW4 reported to CW3, Regional Sales Director, Southeast (August 2010 – March 2014). CW4 confirmed that when the Company had enough revenue for the current quarter, it would roll some over to the next quarter so that the next quarter would look good for Wall Street. This affected CW4 because it caused CW4 to have to wait for CW4's commission payouts, which were deferred.
5	Regional Manager (2010 – March 2014)	CW5 was responsible mainly for CommVault's relationship with Dell. CW5 reported to the manager of all of CommVault's OEM relationships, Peter Byrne, Director, North America OEM Sales, from 2012 until CW5 left the Company. Peter Byrne reported to Scott Skidmore, Vice President, Americas Channel (December 2010 – present). CW5 described CommVault's inability to replace Dell with other business partners, stating that it would have taken years, at a minimum, to generate even close to the percentage of revenue from other partners that had been generated by the Dell partnerships. CW5 also confirmed that sales quotas and high turnover within CommVault's sales force increased as CommVault's relationship with Dell deteriorated.
6	Territory Account Executive (January 2012 – June 2013)	CW6 was based in Los Angeles, CA, and reported to David Vento, then-Director of Sales (July 2012 – April 2014). CW6 described the effects in the field of CommVault's transition away from Dell, beginning in the fourth quarter of fiscal 2013. Among other issues, CW6 stated that a number of pipelines were changed immediately and CommVault's attempt to replace Dell with other distribution partners, including NetApp, was unsuccessful.

CW No.	Position & Tenure	Job Description/Relevant Responsibilities
7	Account Manager (August 2012 – February 2014)	CW7 reported to David Vento, Director of Sales – Commercial – West (April 2014 – January 2015) and Director of Sales (July 2012 – April 2014). David Vento reported to Rick Baumgart, Vice President Western US Sales (2008 – present). CW7 attributed the Company's inability to meet its revenue growth targets to the loss of Dell as an OEM partner. CW7 further described the consequences of the loss of Dell as a business partner on CommVault's sales force, including high turnover.
8	National Partner Manager (June 2012 – October 2014)	CW8 reported to Scott Skidmore, Vice President, Americas Channels (December 2010 – present). CW8 was responsible for developing sales strategies to enable one of CommVault's indirect channels partners, CDW, to generate opportunities with CommVault solutions. CW8 described the impact of Dell's transition away from CommVault on the sales force, including that the Company unrealistically increased sales quotas across CommVault, that there were not any deals in the pipeline, and that these practices led to high turnover among the sales force. CW8 further confirmed that the Company's effort to replace Dell with other business partners was not successful.
9	Lead Management Specialist (April 2012 – August 2014)	CW9 was based in CommVault's Oceanport, New Jersey headquarters and reported to Telemarketing Manager Marie DiPaolo, who, in turn, reported to Senior Director of Corporate Marketing, Dawn Colossi, who, in turn, reported to Dave West. CW9 confirmed that West's resignation was unexpected, given that West was well-liked within the Company.

CW No.	Position & Tenure	Job Description/Relevant Responsibilities
10	Federal Enterprise Account Executive, Special Programs (April 2012 – December 2013)	CW10 reported to Pat Sheridan, who, in turn, reported to Matt Galligan, Vice President Federal (April 2011 – December 2013). CW10 confirmed that CommVault was focused on meeting its revenue numbers at any cost, and that the Company's representations concerning revenue growth were not supported by the experience of CW10's team in the field.